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THE WHITE HOUSE
WASHINGTON

May 2, 1977

Bert Lance -

The attached was returned in
the President's outbox. It is
forwarded to you for appropriate
handling.

Rick Hutcheson

Re: Administration Position on
H.R. 5959 The Renegotiation
Reform Act of 1977

cc: Stu Eizenstat
Frank Moore
Jack Watson
Betty Rainwater

THE WHITE HOUSE
WASHINGTON

Mr. President:

Stu's comments on the OMB
assessment of the Minish
Bill are attached.

Also attached is the earlier
OMB memo on the Minish bill
which you have already read.

Rick



THE PRESIDENT HAS SEEN.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

*Bert. I prefer
to support the
bill, with some
flexibility built in as
indicated below.*
APR 29 1977 J

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: BERT LANCE *BR--*

SUBJECT: Administration Position on H.R. 5959, The Renegotiation Reform Act of 1977, The Minish Bill

Chairman Minish's House Subcommittee on General Oversight and Renegotiation is scheduled to mark up H.R. 5959 on Monday, May 2, 1977. We believe it important to communicate the Administration position by then and suggest that we determine our position by Friday, April 29.

Per your request, Bo Cutter has discussed our current assessment of H.R. 5959 (~~attached at Tab A~~) with Admiral Rickover. The Admiral strongly supports all of the provisions of the bill. In addition, Bo and OMB staff met with Board Chairman Chase and his staff.

Based on these discussions and further OMB staff analysis, we continue to believe that the Renegotiation Board can be significantly strengthened by certain provisions in the Minish Bill. However, we also continue to have reservations concerning four provisions of the bill. These provisions and our recommendations are as follows:

- ° Change the basis of renegotiation from the aggregate company business done during a fiscal year to the business done by each division and major product line.

*Give Board
limited authority
to exempt an
industry*

Comment: This would be a major change in policy with respect to renegotiation proceedings which would impose rigid standards on the Board, and place undue restrictions on contractors. The Board recommends that such policy be mandated, thereby not allowing it any flexibility in this area. We favor allowing the Board to exercise judgement as to the evaluation of profits and losses in different segments in arriving at an aggregate determination of excessive profits and think the Board has such authority today. The Board also believes that it may have authority to offset low profits against high profits, but is required to offset losses against high profits. Thusfar, this question has not been resolved in the courts. If there is doubt, we suggest an amendment making it clear that it does have such discretion.

oh

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Recommendation: That the Administration oppose this mandatory provision but inform the Committee that we would favor an amendment clarifying the Board's authority to exercise judgement in analyzing and evaluating by product line.

☐ Agree

☒ Disagree *See above*

- ° Prohibit the percentage of completion method of accounting for the purpose of reporting renegotiable sales.

Comment: As expressed in our earlier memorandum to you, we believe that the Board has not supplied sufficient rationale prohibiting this generally accepted accounting method. The Board now has authority to require various methods of accounting and, as such, has sufficient flexibility to amend whatever procedures are currently employed by the contractor. We believe the Board should strengthen its own capabilities to handle various cost allocation procedures rather than place an added stricture on all contractors.

Recommendation: That the Administration oppose this provision. (In our earlier memorandum, you agreed with this view.)

☐ Agree

☒ Disagree

- ° Require that "Every financial statement...shall be verified by an audit performed by the Board or its authorized audit representatives."

Comment: The Board agrees that it clearly has authority under current law to audit contractor records but is not required to do so. Requiring audits in all cases, even where the Board thinks they are not needed, will result in unnecessary additional resource requirements for the Board and needless burden for contractors.

Recommendation: That the Administration oppose this provision. (In our earlier memorandum to you, you agreed with this view.)

☒ Agree

☒ Disagree

- ° Continue the standard commercial articles exemption but with material changes, subject to a study (to be completed by December 31, 1977) of whether the exemption ultimately should be retained.

Comment: The proposed study of the exemptions is appropriate. However, until such a study is completed, we believe it unwise to take the action called for in this provision.

Recommendation: That the Administration agree to the proposed study but oppose enactment of the exemption modification prior to the study's completion.

☐ Agree

☒ Disagree

Attachment

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for Preservation Purposes**

FIZENSTIAT COMMENT

THE WHITE HOUSE

WASHINGTON

April 29, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: STU EIZENSTAT *Stu*
BILL JOHNSTON

SUBJECT: Minish Bill to Strengthen
the Renegotiation Board

We strongly support the Minish Bill.

OMB objects to four key provisions in the Bill. Admiral Rickover, with whom we have discussed this Bill, strongly feels that each of these provisions is crucial to strengthening the government's procurement process. We agree with his assessment. The Bill has strong support among Democratic legislators on the Hill, and among all members of the Renegotiation Board you recently appointed.

- 1) Companies with more than \$4 million gross would be required to report costs and profits by division and product line rather than simply on an aggregate basis. OMB argues that this requirement adds an additional paperwork burden. In addition they point out that the Board already has authority to require product line renegotiation.

Comment: Supporters of this amendment argue that it is unfair for a company to offset its excess profits in one line of business against its smaller profits or losses on another. To use a hypothetical example, a giant contractor such as General Dynamics, could make large profits on its submarine business (in which it might have a monopoly) but not be subject to renegotiation because these large profits would be watered down by smaller gains from its aircraft manufacturing operations. Since the FTC and other federal agencies have already moved toward product line reporting, the additional paperwork burden would be minimized. Although the Board has authority to require product line accounting, it has seldom exercised its power due to its generally complacent membership. To improve flexibility, current legislation might be changed to give the Board limited authority to grant exceptions from unnecessary product line accounting.

- 2) "Percentage of completion" accounting would be prohibited for the purposes of renegotiation. OMB argues that this is a standard accounting practice, and that prohibiting it could force contractors to adopt new accounting procedures solely for the purpose of renegotiation.

Comment: While percentage of completion is a standard method of accounting, its use in renegotiation proceedings can result in an inaccurate estimate of company profits. Companies often manipulate their accounts to show losses on work in progress. Using percentage of completion accounting, they can use these paper losses to offset profits on completed work, temporarily avoiding return of these profits to the government. Major companies continuously engaged in large volumes of federal work can keep substantial excess profits sheltered indefinitely from renegotiation recovery. The Minish bill would simply require renegotiation proceedings to take place when contracts are completed, rather than while they are in progress.

- 3) Every financial statement from a contractor with more than \$4 million of annual business would be required to be audited. OMB argues that this would involve large unnecessary costs, both for the government and for business. They point out that the Board can already require audits when necessary.

Comment: Supporters of this requirement point out that the Board has seldom used its auditing authority. They believe that the Defense Contract Audit Agency, which already routinely performs audits on all non-competitive defense contracts over \$1 million, could be used to perform these audits with little additional manpower or expense. Without routine audits, they believe that contractor's profit figures will continue to be unreliable. Again, to allow flexibility, the Board might be given authority to exempt contractors from audits, under certain limited circumstances.

- 4) The rules governing the exemption of commercial products would be changed, contingent on the completion of a study of these rules. OMB argues that the rule changes should not be enacted prior to completion of the study.

Comment: There is evidence that the exemption for standard commercial products has been abused. For example, specialty steels used only in submarine hull construction are broadly interpreted as standard commercial steel products, and are therefore exempted from renegotiation. To postpone enactment of the exemption modification pending completion of the study will probably effectively kill needed changes, since action on another bill modifying renegotiation proceedings will be unlikely following final passage of the Minish Bill.

We recommend that you meet with Congressmen Minish and Reuss, and come out in favor of the Bill as written. It would seem inconsistent with the strong persons you have just appointed to the Renegotiation Board for the Administration to now support amendments to water-down the Bill.

OMB ANALYSIS

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 15, 1977

*3rd - 11:00
let someone from
OMB or Staff
discuss briefly
in Rickard's
J*

INFORMATION

MEMORANDUM FOR: THE PRESIDENT
FROM: BERT LANCE *Bert Lance
by wsc*
SUBJECT: Administration Position on H.R. 5959,
The Renegotiation Reform Act of 1977

Per your request.

This is in response to your request for my staff's assessment of H.R. 5959, "The Minish Bill."

Background

Renegotiation originated in World War II and was carried on during Korea and Vietnam as a response to an economy which required urgent procurement with less than normal regard to price negotiations. There is substantial agreement that conditions have changed -- we no longer have an emergency economy and procurement procedures are improved and more relaxed. Opponents, therefore, argue that we do not have a continued need for renegotiation. We do not regard the elimination of renegotiation as a viable possibility. We do believe that the substantive impact of renegotiation, and the administrative effectiveness of the process, can be improved.

Principal Features of H.R. 5959

We support a number of provisions of H.R. 5959 which would substantially strengthen the Renegotiation Board. Briefly these provisions:

- extend the Board's authority until 1982;
- exempt from the Board's jurisdiction those firms with total sales under \$4 million annually (the previous level was \$1 million in annual sales);
- restructure the Board for 5-year staggered terms, provide a bipartisan appointment requirement, strengthen the administrative authority of the Chairman, and upgrade the executive level of the Chairman from executive level V to level IV.

- authorize subpoena power for the Board; and
- increase penalties for delinquencies and false or misleading information.

The bill also proposes a number of changes about which we have reservations. These provisions would:

- change the basis of renegotiation from the aggregate company business done during a fiscal year to the business done during a fiscal year by each division and major product line.

Comment: This change would require special financial reporting from many contractors and subcontractors for renegotiation purposes, an additional burden requiring more paperwork. However, it must be recognized that there is a growing trend toward other agencies, such as Federal Trade Commission, requiring reporting on a segmented basis. More importantly, we believe the provision does not provide fair consideration to market and other circumstances that cause losses or low profits in portions of a contractor's business with the Federal Government. Under current law, the Board has adequate authority to analyze renegotiable business on a division or product line basis when warranted by a contractor's mismanagement or otherwise.

- prohibit the percentage of completion method of accounting for the purpose of reporting renegotiable sales.

Comment: We can see no valid reason for not allowing contractors to use this accounting method. It is a generally accepted accounting procedure and to prohibit the use of it may result in many contractors having to institute new accounting procedures solely for renegotiation purposes and thereby increase Government procurement costs. The Board now has authority to require methods of accounting that adequately reflect a contractor's renegotiable income and costs.

- modify the existing exemption in the Act for standard commercial articles as follows:

1. The exemption for standard commercial articles would remain but the exemptions for certain "classes" of standard commercial articles and certain commercial "services" would be repealed.

2. The required level of nondefense sales for exemption-qualification purposes would be increased to 75 percent from the current 55 percent.
3. The nonrenegotiable sales base to which the percentage qualification level is applied would no longer include sales to Federal Government agencies not covered by the Renegotiation Act.
4. Contractors would be required to furnish "complete cost and pricing data" on all articles subject to the exemption.

In addition, the Renegotiation Board would be directed to study all exemptions and to submit recommendations on their retention to the Congress by December 31, 1977.

Comment: We believe that the proposed study of the exemptions is appropriate. However, until such a study is completed, we believe it unwise to take the action called for in this provision. A study of the exemption, as called for in the bill, is needed, but it should be completed before and not after action is taken to modify the exemptions.

- require that "Every financial statement ... shall be verified by an audit performed by the Board or its authorized audit representative."

Comment: At present, the Board has the authority to audit contractor books and records but is not required to do so. To require audits in all cases, even where the Board thinks they are not needed, will result in unnecessary additional resource requirements for the Board and needless burden for contractors.

Jagu

- provide that interest is to accrue on excessive profits from the period beginning after the last day of the fiscal year in which such profits are earned to the date of payment or recovery.

Comment: At present, interest accrues from 30 days after the date of the excessive profit determination by the Board. In many cases, it is difficult to determine who may be responsible, the Board or the contractor, for delays in the renegotiation process. In those cases where the Board is responsible for unnecessary delays, we believe it unfair to charge the contractor additional interest.

- require the Board to provide the Secretary of each affected Department a summary of each financial statement which reflects receipts of accruals under contracts with such Departments.

Comment: This provision would result in unnecessary additional reporting requirements. We believe that any necessary exchange of information can be adequately handled under administrative procedures.

General Concerns

These include:

- . the additional cost impacts on contractors in complying with the above requirements and the reduction in competition for Government contracts which will ultimately be a burden to the Federal Government in the form of higher contract prices;
- . the substantial additional resources needed by the Board to carry out these additional requirements;
- . the institutionalizing on a mandatory basis of procedures now available to the Board for use when warranted in its discretion; and
- . the questionable fairness of changing the renegotiation rules under existing contracts which were priced and entered into in reliance on current law.

Current Status

To assist us in evaluating the provisions of H.R. 5959, we have asked the Board to provide us with their estimates of what additional resources would be required if the bill were enacted. Office of Management and Budget staff are planning to meet with Chairman Chase and his staff on Monday, April 18, 1977, to discuss our concerns with H.R. 5959.

The Board currently has pending before the Office of Management and Budget a budget supplemental (\$925,000 - 46 full-time permanent positions) and amendment (\$2,465,000 - 89 full-time permanent positions) request to facilitate the reduction of the Board's current case backlog.

THE WHITE HOUSE
WASHINGTON

Date: April 29, 1977

MEMORANDUM

FOR ACTION:

The Vice President
Stu Eizenstat *attached*
Hamilton Jordan (Rainwater) *NC*
Bob Lipshutz
Frank Moore
Jack Watson

FOR INFORMATION:

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Bert Lance memo 4/29 re Administration Position on
H.R. 5959, The Renegotiation Reform Act of 1977,
The Minish Bill.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: IMMEDIATE TURNAROUND

DAY:

DATE:

ACTION REQUESTED:

☒ Your comments
Other:

STAFF RESPONSE:

☐ I concur. ☐ No comment.
Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Date: April 29, 1977

received by
mail 12:50
4/29

20

MEMORANDUM

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✓ No comment.
18

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 29 1977

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Recommendation: That the Administration oppose this mandatory provision but inform the Committee that we would favor an amendment clarifying the Board's authority to exercise judgement in analyzing and evaluating by product line.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 15, 1977

*2nd - 11:00
let someone from
OMB or Staff
discuss briefly
2. H. R. 5959*

INFORMATION

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THE PRESIDENT

FROM:

BERT LANCE

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by wsc*

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THE WHITE HOUSE
WASHINGTON

May 2, 1977

The Vice President
Midge Costanza
Stu Eizenstat
Hamilton Jordan
Bob Lipshutz
Frank Moore
Jody Powell
Jack Watson

re: Budget Projections

The attached was returned in the President's
outbox and is forwarded to you for your
information.

Rick Hutcheson

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

May 1, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT *Stu*
SUBJECT: Budget Projections

As a part of the continuing "in-service education" of my staff, I arranged for and had a briefing by Alice Rivlin of the Congressional Budget Office and her staff on budget projections for the next five years. I attach for your information a summary of the presentation which we were given on Friday. The issue they developed was whether or not from their standpoint a balanced budget was consistent with the goal of full employment.

Their conclusion is that it is possible to reach both reasonably full employment (near 5%) and a balanced budget in FY 1981, but only with a great deal of good luck.

According to CBO, this would require not only governmental action to stimulate the economy but also an unlikely growth in the "autonomous strength of nonfederal demand" -- demand strength in the private economy not directly related to federal fiscal policy. In particular this would require:

- o an investment boom starting in FY 1979 not directly related to federal stimulus and
- o a major increase in the growth of state and local spending not directly related to federal stimulus. This is not likely, especially given declining school enrollments.

The overall message of the CBO analysis is that unless we are very lucky in achieving autonomous private recovery, we will have to choose between coming close to our employment goal (through more expansionary fiscal policy) and achieving a balanced budget in FY 1981 (through more restrictive fiscal policy).

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for Preservation Purposes**

Moreover, if there is weak autonomous growth in non-federal demand, achieving a balanced budget may become virtually impossible.

The attached CBO analysis is based on (1) assuming a set of economic goals; (2) assuming a level of growth in nonfederal demand, (3) assuming a federal spending level, and then (4) solving for the level of deficit through tax cuts needed to attain the economic goals given the stated level of nonfederal demand. Essentially the three tables at the end of the report show:

- o that with very optimistic assumptions about autonomous private demand, an unemployment rate near 5% and a balanced budget in FY 1981 can be achieved (Table 1);
- o that with more realistic assumptions about autonomous private demand an unemployment rate near 5% in FY 1981 is achieved only at the cost of a deficit in excess of \$49 billion (Table 2);
- o that with the more realistic assumptions about autonomous private demand a budget near balance in FY 1981 can be achieved only at the cost of unemployment nearer 6% (Table 3);
- o if there had been a fourth table it would, according to CBO, show that if pessimistic assumptions are made about growth in nonfederal demand, a balanced budget in FY 1981 is virtually unattainable.

FULL EMPLOYMENT AND A BALANCED BUDGET: CAN WE HAVE BOTH BY 1981?

I. General Principals

A. The Autonomous Strength of Nonfederal Demand is Critical

The key determinant of whether we can achieve both full employment and a balanced budget by fiscal year 1981 will be the autonomous strength of nonfederal demand. "Autonomous strength" means strength which does not stem from federal budget stimulus. Examples are:

1. consumer willingness to spend a larger share of each extra dollar of after tax income.
2. business willingness to invest heavily based on confidence in the future, without special tax incentives such as the investment tax credit.
3. strong growth in state and local spending without inducements such as federal revenue sharing.
4. strong net export demand not dependent on tax incentives such as DISC.

If nonfederal demands are autonomously strong, they will contribute directly to rapid economic growth and to progress toward federal budget balance. Weakness of nonfederal demand will hinder progress toward both goals.

B. The Role of Changing the Budget

For a given nonfederal demand environment, rapid economic growth and federal budget balance are conflicting not complementary goals. Restricting both expenditure growth and tax reductions will help balance the budget, but at some cost in terms of the rate of growth.

The size of the federal budget is not the key issue. Even a budget with severely limited expenditures cannot be balanced at full employment levels of GNP if nonfederal demand is weak. Conversely, a budget with large expenditure increases can be balanced at full employment if nonfederal demand is strong (although this might require a tax increase above current policy levels.)

C. Measuring the "Room" for New Federal Programs

Many people have used the difference between current policy revenues and expenditures in a traditional five-year budget projection to measure the "room" for new programs. The stronger is the assumed level of economic activity, the larger is the apparent leeway for new programs. Unfortunately, this approach is very misleading.

The danger in putting too many new federal programs in place is that nonfederal demand will be too strong, not too weak. If nonfederal demand is weak, new federal programs will largely serve to mobilize otherwise idle resources. If nonfederal demand is strong, new federal programs will be competing directly for the limited physical resources of the economy. In this case a tax increase may well be needed to limit inflationary pressures. Even so, the new federal programs would involve shifting resources from the private to the public sector.

D. "No Free Lunch" Still Applies

In a given nonfederal demand environment and with a fixed goal for growth in real GNP, higher federal expenditures must be accompanied by higher taxes. Very often this appears in the form of smaller potential tax cuts, but the principal still holds. If expenditures are held down taxes can (indeed taxes must) be lower to attain a fixed GNP goal.

II. Alternate Scenarios

A. Optimistic Nonfederal Demand and High GNP

Table 1 shows highlights of a scenario which meets the announced administration targets of near full employment and a balanced federal budget by fiscal year 1981, with expenditures at 21 percent of GNP. The most optimistic of the nonfederal demand assumptions is the accelerating growth in autonomous state and local spending and a very strong investment boom beginning in 1979.

Many factors raise doubts about such strong state and local government spending. These include demographic factors which are tending to slow the pace of school construction and the impact of the much publicized financial problems of New York City.

A strong investment boom is a very real possibility, although the one assumed here would be exceptional. To date, housing has recovered nicely from its very low recession levels. Most analysts are not expecting further strong gains in the next two years, however. Business fixed investment has been slow to recover since early 1975, although its growth in real terms averaged 8.2 percent from the fourth quarter of 1975 through the first quarter of 1977. As capacity utilization rates improve in 1977 and early 1978, a major investment boom could be in prospect.

B. Less Optimistic Nonfederal Demand and Two Alternate GNP Paths

Table 2 and 3 present highlights of two scenarios which incorporate weaker nonfederal demand behavior than was assumed in Table 1. Consumer behavior is weaker, the investment boom is less extreme, and state and local spending grows more slowly, although still at a fairly rapid pace.

The scenario in Table 2 maintains the same GNP target despite weaker nonfederal demand. The GNP target is achieved by sizable tax cuts, and resulting continued deficits.

The scenario in Table 3 assumes a lower GNP target in combination with the weaker nonfederal demand. As can be seen, this lower target can be achieved with smaller tax cuts and near budget balance by fiscal 1981.

The central point of these last two scenarios is that, in the face of less than optimistically strong nonfederal demand, rapid economic growth and federal budget balance are conflicting goals, and a choice between them may be necessary.

III. Implications to Consider

It is the autonomous strength of nonfederal demand which determines the ability to achieve both rapid economic growth and progress toward a balanced federal budget. While federal actions can influence the autonomous strength of nonfederal demand, such influence is limited. In addition, various uncontrollable events such as war, drought or a severe winter, can also play a role.

We cannot be certain that prevailing future conditions will permit both full employment and a balanced federal budget by 1981. We should be prepared to face the choice between these two goals if even our best efforts do not permit avoiding that choice.

TABLE 1. OPTIMISTIC NONFEDERAL DEMAND AND HIGH GNP

	FY1978	FY1979	FY1980	FY1981	FY1982
<u>ECONOMIC GOALS:</u>					
(1) Real GNP (billions of 1972 dollars per year)	1377.4	1439.0	1510.2	1535.7	1660.5
(2) Growth Rate of Real GNP (percent per year)	5.4	4.5	4.9	5.0	5.0
(3) Nominal GNP (billions of current dollars per year)	2038.5	2243.6	2474.7	2729.3	3009.9
(4) Unemployment Rate (percent of labor force)	6.6	6.2	5.7	5.1	4.6
<u>NONFEDERAL DEMAND BEHAVIOR:</u>					
(5) Savings Rate (percent of disposable income)	6.2	6.0	6.1	6.2	6.4
(6) Real Investment Growth Minus Real GNP Growth (percent per year)	1.5	7.0	4.5	3.0	0.0
(7) Investment as a Percent of GNP (percent)	15.1	16.1	16.8	17.3	17.3
(8) Growth Rate in Real Autonomous State and Local Purchases (percent per year)	3.0	3.2	3.4	3.6	3.8
(9) Net Exports (billions of current dollar per year)	3.8	4.9	5.4	5.4	4.9
<u>FEDERAL BUDGET:</u>					
(10) Unified Expenditures (billions of current dollars per year)	459.4	494.3	525.7	573.1	632.0
(11) Expenditures as a Percent of GNP (percent)	22.5	22.0	21.2	21.0	21.0
(12) Expenditures Above Current Policy Levels (billions of current dollars per year)	0	0	0	9.8	29.4
(13) Unified Revenues (billions of current dollars per year)	406.5	462.0	509.5	573.7	637.3
(14) Surplus (+) or Deficit (-) (billions of current dollars per year)	-52.8	-32.2	-16.1	0.5	5.2
(15) Surplus or Deficit as a Percent of GNP (percent)	-2.6	-1.4	-0.6	0.0	0.2

93.6

very optimistic w/ '79 investment boom

very optimistic based on previous years particularly did age population

inflation in
MSTR program in
substant program

TABLE 2. LESS OPTIMISTIC NONFEDERAL DEMAND AND HIGH GNP

	FY1978	FY1979	FY1980	FY1981	FY1982
<u>ECONOMIC GOALS:</u>					
(1) Real GNP (billions of 1972 dollars per year)	1377.4	1439.0	1510.2	1585.7	1660.5
(2) Growth Rate of Real GNP (percent per year)	5.4	4.5	4.9	5.0	5.0
(3) Nominal GNP (billions of current dollars per year)	2038.5	2243.6	2474.7	2729.4	3009.9
(4) Unemployment Rate (percent of labor force)	6.6	6.2	5.7	5.1	4.6
<u>NONFEDERAL DEMAND BEHAVIOR:</u>					
(5) Savings Rate (percent of disposable income)	6.3	6.2	7.2	7.6	7.9
(6) Real Investment Growth Minus Real GNP Growth (percent per year)	1.0	5.0	4.0	3.0	0.0
(7) Investment as a Percent of GNP (percent)	15.0	15.7	16.4	16.9	16.9
(8) Growth Rate in Real Autonomous State and Local Purchases (percent per year)	3.0	3.0	3.0	3.0	3.0
(9) Net Exports (billions of current dollars per year)	3.8	4.9	5.4	5.4	4.9
<u>FEDERAL BUDGET:</u>					
(10) Unified Expenditures (billions of current dollars per year)	459.4	494.3	525.7	543.1	602.0
(11) Expenditures as a Percent of GNP (percent)	22.5	22.0	21.2	21.0	21.0
(12) Expenditures Above Current Policy Levels (billions of current dollars per year)	0	0	0	9.8	29.4
(13) Unified Revenues (billions of current dollars per year)	403.8	446.8	470.4	<i>cutting taxes to get high gnp</i> <u>523.7</u>	581.1
(14) Surplus (+) or Deficit (-) (billions of current dollars per year)	-55.5	-47.4	-55.2	-49.3	-50.9
(15) Surplus or Deficit as a Percent of GNP (percent)	-2.7	-2.1	-2.2	-1.8	-1.7

TABLE 3. LESS OPTIMISTIC NONFEDERAL DEMAND AND SLOWER GNP GROWTH

	FY1978	FY1979	FY1980	FY1981	FY1982
<u>ECONOMIC GOALS:</u>					
(1) Real GNP (billions of 1972 dollars per year)	1377.4	1434.0	1490.6	1550.2	1612.2
(2) Growth Rate of Real GNP (percent per year)	5.4	4.1	3.9	4.0	4.0
(3) Nominal GNP (billions of current dollars per year)	2038.5	2229.7	2426.0	2638.5	2867.8
(4) Unemployment Rate (percent of labor force)	6.6	6.3	5.9	5.5	5.4
<u>NONFEDERAL DEMAND BEHAVIOR:</u>					
(5) Savings Rate (percent of disposable income)	6.3	6.0	6.5	6.5	6.6
(6) Real Investment Growth Minus Real GNP Growth (percent per year)	1.0	5.0	4.0	3.0	0.0
(7) Investment as a Percent of GNP (percent)	15.0	15.7	16.3	16.8	16.8
(8) Growth Rate in Real Autonomous State and Local Purchases (percent per year)	3.0	3.0	3.0	3.0	3.0
(9) Net Exports (billions of current dollars per year)	3.8	5.9	8.8	11.7	14.8
<u>FEDERAL BUDGET:</u>					
(10) Unified Expenditures (billions of current dollars per year)	459.4	497.3	532.7	570.3	608.6
(11) Expenditures as a Percent of GNP (percent)	22.5	22.3	21.9	21.6	21.2
(12) Expenditures Above Current Policy Levels (billions of current dollars per year)	0	0	0	0	0
(13) Unified Revenues (billions of current dollars per year)	403.8	458.4	507.6	565.3	612.6
(14) Surplus (+) or Deficit (-) (billions of current dollars per year)	-55.5	-38.8	-25.0	-4.9	4.0
(15) Surplus or Deficit as a Percent of GNP (percent)	-2.7	-1.7	-1.0	-0.2	0.1

THE PRESIDENT HAS SEEN.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

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April 27 1977 APR 27 PM 5:31

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze CLS

Attached are some briefing materials which we have prepared for your presentation on Monday.

The attached notes and charts cover our economic objectives and their relationship to a balanced budget in 1981. This should, I think, precede the detailed material on the budget which OMB has prepared. The charts, of course, are simply handdrawn illustrations. We are having large charts prepared for your use at the briefing.

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High Employment and a Balanced Budget in Fiscal 1981

(Chart 1) I. Basic Goals for the Economy and the Federal Budget by 1981.

A. Our fundamental objective is to achieve a strong and stable economic recovery.

1. Accomplishing this goal would mean that real output in our economy by 1981 will be 22 percent above the 1977 level. Real GNP will need to grow at an annual rate of about 5-1/4 percent a year to get us there.
2. That degree of improvement in our economy would provide almost 10 million new jobs, and would reduce the rate of unemployment to about 4-3/4 percent by 1981.
3. It would also mean a substantial increase in the living standards of American families. The average after-tax income per person in the United States during 1977 will be about \$6,000. By 1981, that figure would be up to about \$7,000, or 17 percent above this year's level.

4. We can accomplish these objectives, however, only if we bring inflation under better control.

We have set for ourselves the goal of reducing the rate of inflation to 4 percent, from 6 to 6-1/2 percent at present.

5. Reducing unemployment and the rate of inflation simultaneously will require action on a number of fronts, as outlined in my anti-inflation program.

a) Cooperation of labor and management to moderate wage and price increases is essential.

b) Another critical need is to press forward with jobs programs that will increase the skills of our labor force, provide more job opportunities for youth and minority groups, and raise productivity growth. Indeed, reaching a 4-3/4 percent unemployment rate by overall economic policies alone is likely to be impossible, and might overheat the economy. We need to supplement overall policies with targeted employment programs.

(Chart 2)

B. Our economy is still operating far below its potential.

1. The 1974-75 recession was the deepest in 40 years.
2. At the trough of the recession, our total real output was 10-1/2 percent below its potential.
3. The economic recovery has been incomplete. In the first quarter of this year, the gap between our actual and potential output was still 7 percent.
4. We have set as our goal the elimination of that gap by 1981.

C. We intend to accomplish these economic objectives

- within the framework of a gradual return to a balanced Federal budget by 1981.

II. There is a reciprocal relationship between our economic goals and the goal of a balanced budget.

A. The rate of growth of the economy affects the size of the Federal deficit. Faster growth in the private economy increases Federal tax revenues, and it also

reduces Federal expenditures for unemployment insurance and other forms of income maintenance.

B. But Federal budgetary policies also affect the growth of

the economy. Tax reductions stimulate consumer and business spending and raise output and employment.

Increased Federal expenditures -- if the money is used wisely -- will put people to work and stimulate stronger growth of the private economy.

C. Achieving both a balanced budget and high employment in 1981 depends on this mutual interaction between the budget and the economy.

1. If the private economy does grow strongly, Federal revenues will be large enough to balance the budget.

A budget deficit in these circumstances would be highly undesirable. It would over-stimulate the economy, cause an acceleration of inflation, and in all probability lead to a subsequent recession.

2. But if the private economy does not grow strongly enough to balance the budget at full employment, efforts on our part to balance the budget would be counterproductive. Tax increases or expenditure reductions would weaken the private economy still further.

III. What kind of economic performance do we need to achieve both high employment and a balanced budget?

- A. In general, confidence of businesses and consumers must remain strong, so that both consumer spending and business capital outlays rise vigorously. We can translate this general statement into specific performance only very roughly.

(Chart 3) B. Over the past ten years, consumers have been spending about 93 percent of their after-tax incomes on goods and services, and saving 7 percent.

1. The spending rate is, however, quite variable from one year to the next.
-

2. Meeting our economic growth objectives for 1981 will require consumers to spend about 93-1/2 to 94 percent of their incomes on goods and services. This is about the same proportion as they did in 1976 -- more than the average of the past decade, but less than the proportion spent in the early 1960's.

(Chart 4)

- C. Perhaps the more important requirement is that business outlays for plant and equipment must increase rapidly.

We need a strong rise of business capital spending to increase jobs and incomes for American families. We also need it to add to our industrial capacity.

1. Between now and 1981, these expenditures -- adjusted for inflation -- will have to rise by about 50 percent, or at a rate of about 10 percent a year.
2. A prolonged and vigorous rise of this kind is not without precedent. It happened once before in the postwar period -- from 1961 to 1966.

3. The growth rate of business investment we need, however, is much above the long-term trend.

Incentives to invest -- assurance of expanding markets, freedom from a renewed outburst of inflation, certainty about government regulations, fair and equitable tax burdens -- will have to be strong.

IV. Economic projections inevitably involve a high degree of uncertainty. Our long-range budgetary planning must go ahead, nonetheless, and it must take into account the uncertainties we face.

A. It is always easier to add more fiscal stimulus -- through tax cuts or expenditure increases -- than it is to impose more fiscal restraint.

B. We should therefore start with the presumption that the private economy will respond strongly to prudent budgetary policy. This means that we should make a firm commitment now to set the

course of Federal expenditures and revenues so that we will have a balanced budget in 1981 if the private economy grows on the strong track that we have projected

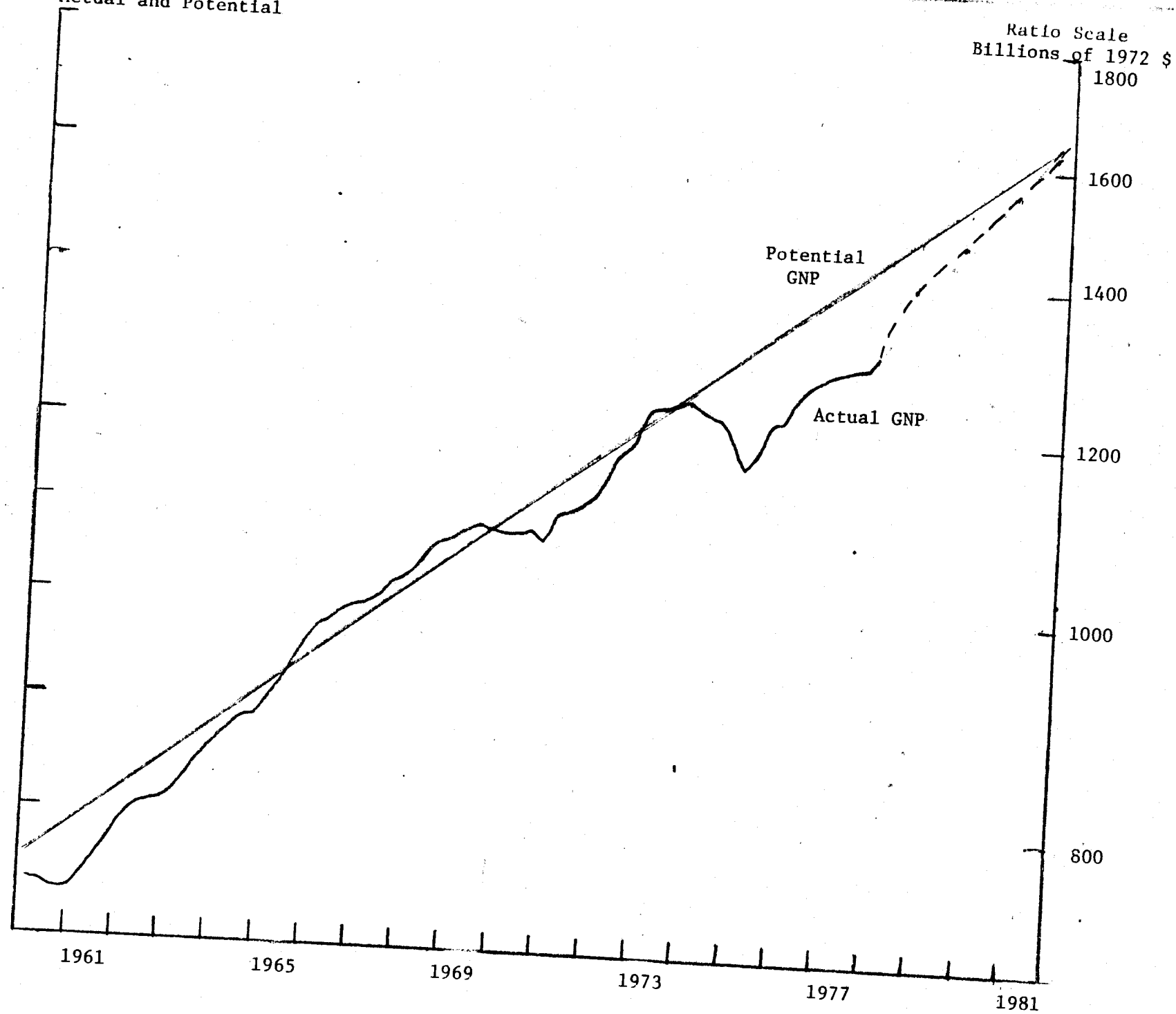
- C. We will then monitor progress toward regaining high employment carefully. If the rate of economic expansion proves weaker than we have assumed, we can react as circumstances require -- cutting taxes for individuals if consumer spending is weak, providing additional incentives for investment if business capital outlays are not moving up strongly enough, adding to housing programs if residential construction falters, or other steps.
- D. By proceeding along these lines, we will enhance our chances of avoiding overstimulation which would aggravate the problem of inflation, while retaining flexibility to counter any weakness in the private economy that may develop.

ECONOMIC GOALS

	<u>1977</u>	<u>1981</u>	<u>Change</u>
Real GNP (billions of 1977 \$)	1,877	2,298	+22% (5.2% per year)
Total Employment (millions)	89.9	99.6	+9.7 millions
Unemployment Rate (percent)	7	4-3/4	
Per Capita Real Income After Taxes (1977 \$)	6,000	7,000	+17% (3.9% per year)
Inflation Rate (percent)	6 to 6-1/2	4	
<i>% GNP Govt spending</i>		21%	

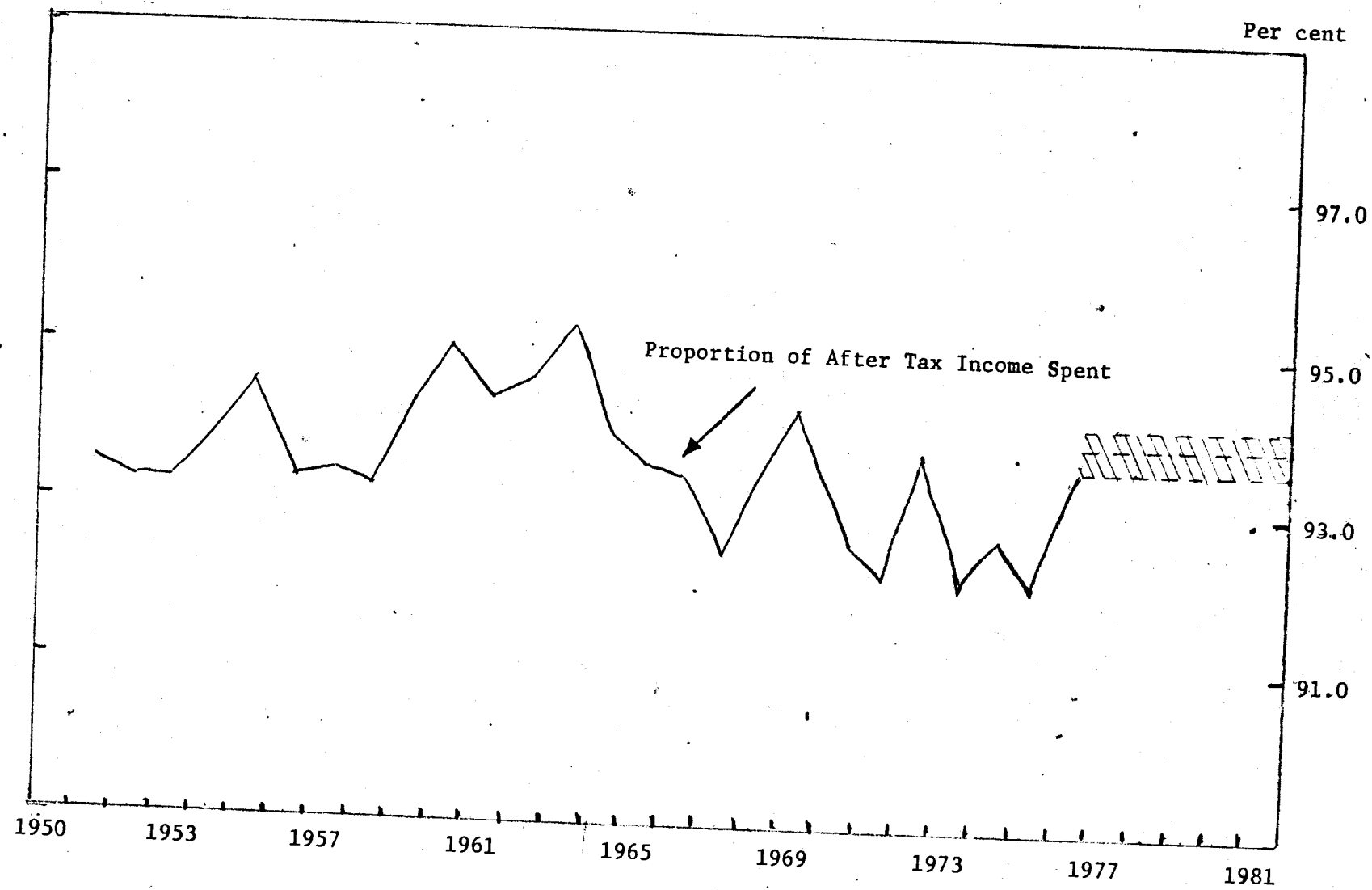
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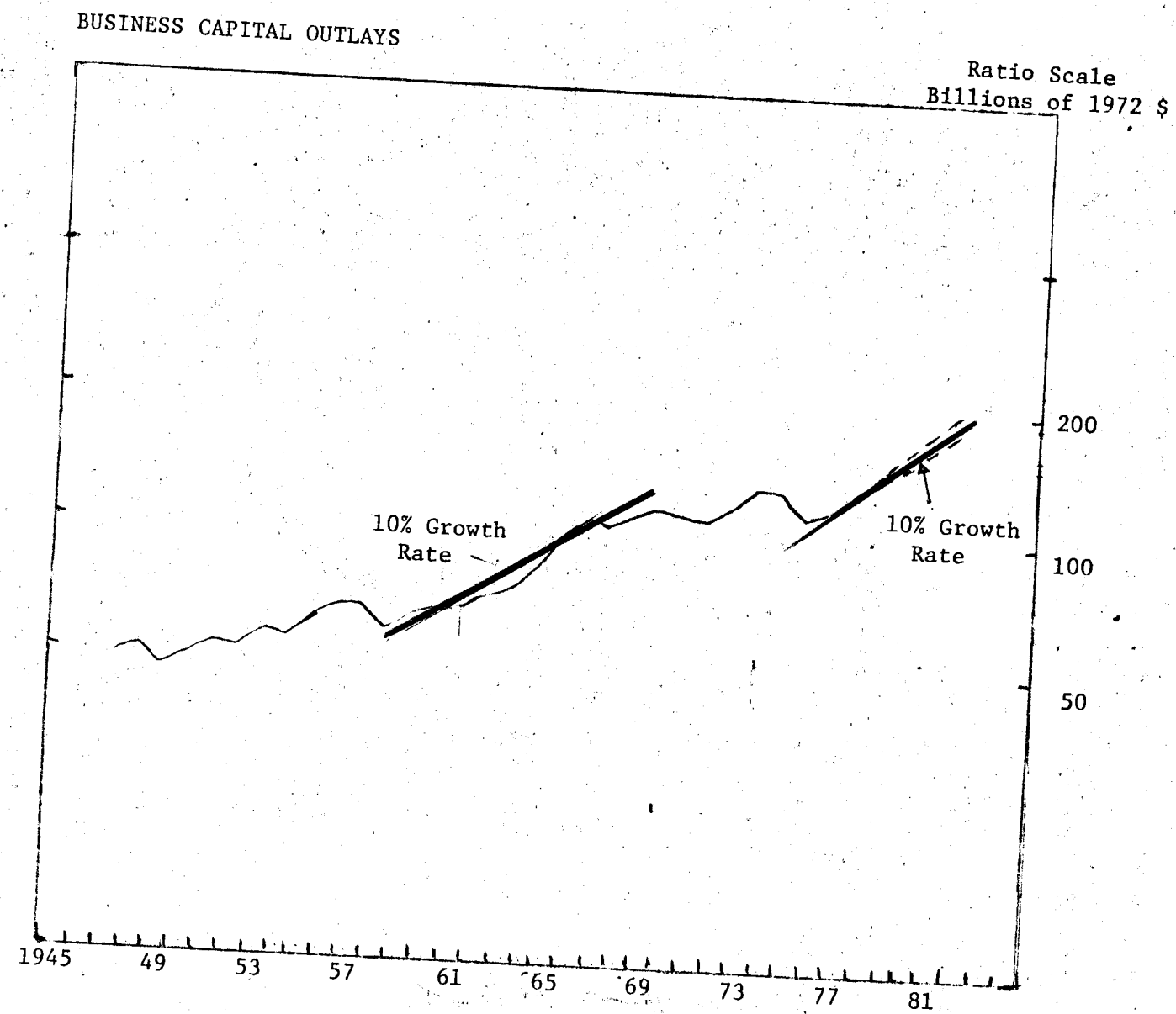
REAL GNP
Actual and Potential



CONSUMER SPENDING RATE

Per cent





April 23, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charlie Schultze C45

SUBJECT: Balancing the Budget in 1981: Economic Assumptions

This note is a preliminary to our discussion next week.

The OMB baseline projection of the "current services" budget for FY 1981 assumes a GNP growth which averages 5.1 percent a year between 1976 and 1981. The unemployment rate falls to 4.8 percent and the rate of inflation to 4.0 percent by 1981.

With those economic assumptions, and no new tax or expenditure programs, revenues would exceed expenditures by \$28.5 billion. (The \$28.5 is probably optimistic. It allows for no inflation adjustment in a number of Federal programs, including veterans' compensation and pensions.) The economic assumptions are assumptions, not forecasts -- they are used to derive the personal income and corporate profits figures which, in turn, are needed to make estimates of revenues.

There is a two-way relationship between the growth of the economy and the budget:

- The rate of growth in the private economy affects the budget; the stronger the growth the larger are budget revenues.
- The budget affects the economy; tax cuts can be used to put money in consumers' pockets and to spur business investment -- private sales, output, and employment are stimulated; Federal expenditures

also put people to work, increase consumer incomes, and spur the economy. The greater the inherent strength of the private economy, the less it needs stimulus from the Federal budget.

Achieving both a balanced budget and full employment in 1981 depends on this two-way interaction:

- If the private economy does pick up sufficient steam then: (i) Federal revenues will be large enough to balance the budget; and (ii) the economic stimulus from a budget deficit will not be needed to reach high employment. Indeed, under these conditions a budget deficit would lead to economic overheating and renewed inflation.
- If, on the other hand, the private economy is not sufficiently strong then: (i) Federal revenues will not be large enough to balance the budget unless tax rates are increased or expenditures are cut; and (ii) such cuts in expenditures or tax rate increases would be exactly the wrong medicine because they would reduce economic growth still further, and make the unemployment picture even worse.

In summary, simultaneously achieving a balanced budget and high employment depends on the underlying strength of the private economy. We can achieve both a balanced budget and full employment only if the private economy grows strongly.

The Strategy of Long-Run Budget Planning

The possibility and desirability of budget balance in 1981 thus depends on the underlying strength of the private economy over the next four years. But forecasting that far ahead with any degree of confidence is impossible. How, then, do we do long-run budget planning?

It is always easier to increase expenditures or cut taxes than to do the opposite. Once long-run expenditure commitments are made or permanent tax cuts passed, it is extremely difficult to undo them, should that prove necessary. For longer-run planning, therefore, we should act as if the economy will be growing strongly (as OMB has done). No decisions should be made currently, by way of long-run tax cuts or expenditure commitments, to the extent they would make a balanced budget impossible.

Budget discipline should be imposed in the context of this kind of planning. Unless this is done, we may be building in an inflationary deficit in years ahead.

If, as the time draws nearer, it turns out that the private economy is significantly weaker than is assumed in the long-run projections, we can react accordingly. Under those conditions a budget deficit would not only be inevitable, but desirable.

By proceeding along these lines we maximize our chances of having a balanced budget to prevent inflation, if the economy is strong, while still retaining our flexibility to stimulate the economy if that should prove necessary.

Presentation Next Week

We are trying to develop some charts which would show:

1. The economic assumptions behind the OMB budget projections.
2. The necessary growth in key elements of the private sector necessary to make those assumptions come true, assuming a balanced Federal budget in 1981.

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INTRODUCTION

A Recommended Program Concerning the Problem of Undocumented Aliens
for the President of the United States

You have asked for recommendations for a comprehensive Federal policy concerning illegal immigration -- a complex issue rooted in powerful social and economic forces that can be redirected only with considerable long-term effort. Illegal immigration results from a combination of strong pull forces within the United States which function as incentives to the migrants and strong push forces in the countries of origin which force individuals to seek opportunity elsewhere. Any successful policy must be directed at these phenomena.

The Problem

Historically, Mexico has been and remains the major source of unlawful entrants to the United States. However, illegal immigration presently involves many nations and other migration streams. Estimates of the population and flow of undocumented aliens are educated guesses at best.

In recent years the number of apprehensions of undocumented aliens has increased dramatically -- from about 50,000 in 1964 to over 750,000 in 1976 -- without a contemporaneous increase in resources. Thus even the more modest estimates set the number of undocumented aliens within the United States at several million. Whatever the figure, the salient point for policy purposes is that the illegal immigration phenomenon is significant and growing. Furthermore, the forces which create and

sustain it will become stronger if present approaches, or the lack of them, persist.

The major domestic impact of undocumented aliens is in the labor market where they compete effectively with native workers, particularly with the minimally skilled and underemployed. However, the overall degree and extent to which they actually displace native workers is unclear from existing studies. Although certain clear cut examples of displacement can be cited in most occupational settings and geographical areas, proving more general propositions about the phenomenon is difficult because of both the lack of data on undocumented aliens and the inherent problems involved in establishing why a person does or does not get a particular job.

The advantages to employers of the low cost labor which these workers provide tends to be offset over time by the range of social costs incurred by the society as large numbers of new communities of families must be absorbed, generally in already congested and beleaguered urban settings. In addition, once undocumented aliens are used in employment, a job situation is sometimes created which perpetuates their use. The employment of undocumented aliens often results in depressed working conditions, discouraging domestic workers from taking certain jobs; the consequent inability to recruit domestic workers results in the continued use of foreign workers despite a possible oversupply of domestic workers. Certain parts of the country and sectors of the economy may already be enmeshed in this self-perpetuating process.

In a broader social sense, the settling in of significant numbers of undocumented aliens produces substantial communities of individuals whose underground existence is predicated upon evading contact with any form of law or government. Such groups cannot be protected from abuse and they are unable or unwilling to assert political and legal rights. The possibility, therefore, of a growing underclass existing outside the legitimate institutions and government of the society is real. Over time, particularly in second and subsequent generations, the situation can cause serious civil rights problems. The long-range implications, therefore, are of significant magnitude.

Preliminary Consultations

These recommendations will be controversial. For this reason and for the reason that so many individuals and groups inside and outside the government believe that they have a primary interest in this subject, it will be very important for these persons and groups to be consulted before the specific recommendations contained here are made public. To accomplish such consultation without delaying public awareness of this program, a public announcement of the objectives and broad aspects of the comprehensive program outlined here could be made as soon as Presidential decisions are made. Such consultations will need to be conducted in three spheres: Congress, representatives of foreign governments, and representatives of interested groups. Contacts of this sort should be made either by the President himself, specific designees, or by members of his Cabinet. While it is not necessary to conduct a great number of such meetings, it will be important to be certain that those with the most significant interests at stake be represented.

The Department of State believes it important to the ultimate successful effect of these programs that the cooperation of the Mexican and other major source country governments be enlisted. Effective and meaningful consultation with these governments is significant in obtaining their cooperation. In the case of Mexico, such consultation could be embraced in the follow up talks to the visit of President Lopez Portillo, scheduled for late May.

Category of Recommendations

The complex problem of illegal immigration requires a multifaceted approach. The policy recommended here consists of a number of separate, but related parts which in summary focus on: (1) employers who hire undocumented aliens; (2) regularization of many of the undocumented aliens already in the country; (3) prospective prevention of illegal immigration; (4) foreign policy initiatives and cooperation; (5) selected certification of alien workers; (6) financial assistance to State and local governments; and (7) a general review of immigration laws. Some of these initiatives will require legislation, others might be accomplished by presidential directive or executive-level policy directives.

The various recommendations are not guaranteed to solve the problem. They are moderate and realistic proposals based on an attempt to be sensitive to many considerations and views as well as cost efficiencies. Still -- because of the emotional nature of this problem and the intensity of commitment characteristic of many interest groups who have had extensive involvement with this issue -- even a moderate policy is likely to encounter some vocal and powerful opposition.

EMPLOYER SANCTION
LEGISLATION

EMPLOYER SANCTION LEGISLATION

The primary incentive drawing undocumented aliens to the United States is the availability of jobs that pay higher wages than jobs available in the source country. This pull is a major force which must be diminished if the alien flow is to be decreased.

Our recommendation is that a variety of proposals be employed. Two broad categories are presented: first, increasing enforcement of existing labor standards laws; and second, seeking legislation making it unlawful to employ undocumented aliens.

This second component -- legislation forbidding employment of undocumented aliens -- is complex and controversial and, to be successful, we believe, requires a simple legal defense upon which the employer can rely to demonstrate the employer's good faith effort to hire only legally employable persons.

A. First Component - Targeted enforcement of existing labor standards legislation.

The potential for exploitation of undocumented aliens is great because of the nature of their skills and because of the essential absence of legal redress on the part of aliens. It is unlikely, for example, that an undocumented alien will file a complaint if an employer is not complying with minimum wage and other labor standards as stipulated in the Fair Labor Standards Act (FLSA). Available evidence indicates that

among Mexican undocumented aliens, a significant minority -- up to 45 percent in some studies -- earn less than the minimum wage. Therefore, to the extent that employers may exploit undocumented workers by violating wage and hours standards, strict enforcement of employment standards statutes could help to remove the incentives, which cause many employers to hire undocumented aliens.

In addition to labor standards laws, the 1974 amendments to the Farm Labor Contractor Registration Act (FLCRA) provide that farm labor contractors must refrain from knowingly recruiting, employing, or utilizing undocumented aliens. However, the impact of this Act is limited to those who are essentially brokers of farm labor (crew leader).

Present enforcement of the Fair Labor Standards Act reaches only about two percent of the total number of employers in the country. We recommend establishing a special enforcement program under the Fair Labor Standards Act aimed at employers of undocumented aliens. The Labor Department's Employment Standards Administration (ESA) is capable of undertaking "directed" investigations, which would be those conducted not in response to a complaint but rather initiated by ESA in industries and occupations with a history and likelihood of employing undocumented aliens.

This augmented directed or targeted approach of enforcement of existing labor standards has the support of a wide range of community and ethnic groups that oppose general employer sanction legislation. Moreover the FLSA stands as one of the government's most successful regulatory programs -- with existing experience and machinery.

However, there are serious drawbacks. Where employers pay the minimum wage but not the prevailing wage, stricter enforcement has no impact. Existing studies report this is frequently the case. Even if undocumented aliens were detected and reported, employers may hire other undocumented aliens again. Finally, labor standards enforcement will not overcome employer preference for workers like undocumented aliens who, whatever they are paid, are perceived as more productive and compliant.

Such a directed enforcement program would produce only minimal results if it were to rely on presently existing resources. By providing additional resources to the Employment Standards Administration (ESA), more effective results could be obtained without decreasing ESA's ability to respond to Fair Labor Standards Act complaints. We recommend that sixty (60) positions at a cost of \$1,700,000 be added to ESA's resources by legislation. The result would be to increase the number of investigations by approximately 4,000 above the current levels. If additional resources are not added, the directed approach can still be pursued by executive level decision, but only at the expense of other FLSA enforcement efforts.

B. Second Component - Legislation should be sought making it unlawful to employ undocumented aliens.

While it is unlawful for undocumented aliens to be in the country or to work here, it is presently not unlawful for an employer to employ them.

Repeated attempts to pass legislation making it unlawful to employ undocumented aliens have failed. Legislation containing employer sanctions

and introduced by Chairman Rodino was passed in the House of Representatives, but not in the Senate, in the 92nd and 93rd Congress. Again in the 94th Congress, the House Judiciary Committee reported a bill providing for both civil and criminal penalties. This measure was never voted on by the full House. Chairman Eastland introduced employer sanction legislation in 1976, but not with criminal penalties. The issue of criminal penalties -- along with Chairman Eastland's unwillingness to support legislation without a provision for liberalized importation of temporary labor -- has impeded such legislation in the Senate.

The proposed legislation presents the dilemma of providing employers with a simple but sure means of adjudging legal status among potential employees in order to comply with the law, while also ensuring that the sanction does not cause or allow employers to discriminate based upon national origin.

Since most employers would likely seek to comply with the law, enforcement efforts could be effectively directed at the aggravated violator group of employers. Opposition to such legislation in the past has been strong among employers who assert that they should not bear the burden of enforcing the nation's immigration laws. Ethnic, civil liberties and certain religious groups have also voiced opposition to employer sanction legislation, asserting that, whatever the safeguards may be, the law will set in motion serious national origin discrimination practices which will be most heavily felt by Hispanics.

1. Penalties

Employer sanctions should be based on a civil penalty scheme. Criminal penalties were felt to be unduly harsh. We propose a scheme that would base enforcement on civil penalties that

may be imposed within the magistrate's division of the federal judicial system. Injunctive enforcement may be sought when appropriate in the federal courts, with the concomitant contempt sanctions available for violation.

Such penalties are appropriate in a scheme, as detailed below, where employers are required to perform certain straightforward, prescribed steps before hiring an employee. Compliance with these prescribed steps would be an absolute defense to an employer in any proceeding under this new proposed statute. The defense would be available even if the employee were unlawfully within the United States and otherwise forbidden from employment.

The question of just what these steps should be is the most controversial issue in the employers sanction approach. Obviously, for such a system to be fair and reasonable for employers, the steps need to be objective and simply prescribed. However, to be an effective tool against employment of undocumented aliens, taking these steps must also generally ensure that the prospective employee is lawfully employable.

Particular emphasis should be paid to ensuring effective enforcement of the civil rights laws that prohibit employment discrimination based on national origin. The current Administration reorganization of governmental civil rights enforcement efforts should seek to maximize enforcement in this area. This proposal for employer sanctions discourages such discrimination by requiring employers to seek proof of citizenship or permanent alien residency of all applicants.

2. Defense

Various available defenses have been proposed in connection with legislation forbidding employers from hiring undocumented aliens. These proposals include: (a) reliance on a combination of presently-existing identification systems; (b) strengthen the issuance procedures for social security cards; (c) requiring an employer to submit names of prospective employees to a government agency for a "certification" that such individual is employable; (d) requiring a statement under oath from a prospective employee that the applicant is eligible to work; and (e) creating a new secure card.

We recommend the use of a multiple identification defense. We also recommend that procedures for issuance of social security cards be strengthened.

- a. Multiple Identification Defense - Requirement
that all job applicants show one or a combination
of existing identification systems.

A number of identification devices exist which could be used, as prescribed by the Attorney General by regulation, as indicia in determining eligibility to work. Examples might be the social security card, birth certificate, or resident alien and naturalization papers. The Farm Labor Contractor Registration Act, the only similar piece of legislation currently in force, uses this approach.

The major advantages of the multiple-identification approach are that it is already in place, it requires little administrative machinery and opposition based on invasion of privacy grounds is considerably lessened.

However, use of existing systems has serious weaknesses: with the exception of the ADIT card [a secure identification card presently being issued by the Immigration and Naturalization Service (INS) to lawful aliens] they lack any real security; many are easily counterfeited; and they do not link the card necessarily to the holder. Also, the variety and lack of reliability of existing identification systems may lead employers to apply the identification criteria unevenly, thereby fostering potential discrimination and fraudulent document production. Nevertheless, it is believed that this approach will have some ameliorative effect on the pull-factors of illegal immigration, since on balance it will make it more difficult for undocumented aliens to obtain employment. Also, the Attorney General can protect against the possibility of discrimination by issuing strict regulations concerning the procedures employers must follow in all cases.

b. Strengthen the Issuance Procedures for Social Security Cards.

The social security number system is the most widely used common identifier. Approximately 250 million cards have been used since 1937, 170 million of which are presently held by living persons. The present social security card has been easily counterfeited and cannot be relied upon as an accurate indicator of U.S. citizenship.

The Social Security Administration (SSA) has only been required by law to require proof of citizenship or lawful alien status upon issuance of a number since 1974. Thus very few current social security number holders in the work force have been required to demonstrate the legality of their presence in the United States.

These limitations notwithstanding, current law requires a showing of eligibility based on citizenship or lawful alien status. Tightening the implementation of this provision would require increased tests and improved methods of determining legal status by the Social Security Administration and further cooperation with state and local governments in enumerating school-age children and strengthening establishment of eligibility for welfare programs. We recommend that the Secretary of the Department of Health, Education and Welfare take measures that this be done.

c. The Administrative Certification Defense -

Require all employers to submit the names of a prospective employee for clearance.

This proposal has been recently advanced by members of the House Judiciary Committee Staff. In brief, the plan would require all employers to submit the names of all new employees to the Immigration and Naturalization Service (INS) for certification that the prospective employee is either a citizen or an employable alien. INS would then be required to contact state or county recordkeeping centers to verify birth, or if unavailable, use other criteria or utilize its own records to verify employable alien status.

Employers could hire the applicant for a temporary sixty (60) day period. If, at the end of that period, no certification can be made by INS, the employee would be permitted to submit his own evidence of citizenship to an INS office, which would then certify or reject the potential employee. One modification to the House Judiciary proposal that has been

suggested is that in the event no certification can be made within the sixty (60) day period, the employer be permitted to accept the employees' averment of legal status made at that time, which would also operate to absolve the employer from liability under the sanction law.

The paramount difficulty to this overall proposal is the administrative impracticalities. It is impossible to estimate how many such checks would be required. About 3-4 million people enter the job market annually. It is estimated that approximately 10 million change jobs annually. Each would require certification, and many, including the Immigration and Naturalization Service, advise that no such capability exists or is practicable.

In addition, certain groups argue that any centralized information verification system threatens individual privacy.

- d. Employee Affidavit - Require an averment of all new employees to the effect that they are legally employable.

One defense that has been advanced is that prospective employees be requested, at the time of hire, to attest to their legal or citizenship status.

One method would be to add an oath of work eligibility to the W-4 tax form currently completed by the vast majority of employees to register exemptions. The revision would merely require the person executing the form to check a box indicating whether the applicant is a U.S. citizen or an alien. A person checking the alien box would have to complete a

supplemental form. On the supplemental form, aliens would check an appropriate box opposite a preprinted description of their immigration status and the employer would certify as to the documentary verification of the alien's status. In 1974, the Internal Revenue Service argued that it could not change the W-4 form because of its effort to simplify all tax forms and any proposal to adapt the W-4 form for a non-tax use is contrary to that policy.

Another problem with using the W-4 form as a vehicle for such an averment is that not all legally employable individuals are required to fill out such a form. For example, some Canadian and Mexican non-residents as well as certain domestic household employees are exempt from tax withholding. Another suggestion has been to create a new simple form for such an averment by the employee.

Because little is accomplished by any employee averment requirement toward the overall policy goal of reducing pull-factors, we recommend against its adoption.

- e. "Secure Card" Defense - Requires developing a secure identification card system.

An alternative to permitting employers to rely on a number of existing identification devices is to develop a more secure identification system either by improving an existing one or creating a new system.

Consideration of a secure identification system raises many difficult issues and evokes sharp controversy in the public mind. Many groups and individuals view the development of a secure identification system as a

fundamental abrogation of civil liberties. At the core of these objections is the fear that such identification systems will lead to governmental invasions of individual privacy. If such a system were in existence, temptations to enlarge its use and scope would no doubt be advanced, perhaps initially to include credit information and eventually to be used as part of law enforcement procedures. Statutory limitations are seen as too fragile a safeguard, since they could be easily removed in some future time when individual liberties and personal privacy might be less regarded.

In addition, many persons question the very premise of ever creating a truly secure, non-counterfeitable, identification system. Any attempt to do so will be extremely expensive and will require substantial, radical improvements of existing systems.

For example, in order to rely on the social security card as an identifier of an individual's legally employable status, the Social Security Administration eventually would have to issue new cards, upon proof of such status, to the entire adult population of approximately 150 million persons. While there are no current, precise estimates on the cost of issuing new cards to that many people, the Social Security Administration has estimated that issuing a plastic credit-card type of card to 100 million persons would cost approximately one-half billion dollars and would take at least four and one-half years. This cost estimate covers only the issuance of new and replacement cards and the collection of proof. It does not include the creation of any employer verification system, such as a computer bank that

would enable employers to call to verify the validity of a card. In addition, it should be emphasized again that the accuracy of the determination of eligibility made by the Social Security Administration would only be as reliable as the evidentiary documents, such as birth certificates, certificates of citizenship, naturalization certificates and hospital records, accepted as proof for issuance.

Many people believe that the social security system should not be adapted to these purposes. While it is true that the Federal government has in the past sanctioned for itself and on behalf of others, wider and wider use of social security numbers and the social security system for a variety of purposes, this growth in the use of the number and system is drawing increasing criticism.

Summary of Recommendations

We recommend that legislation be enacted prohibiting employers from hiring undocumented aliens. Such legislation would provide that the penalty for each violation would be a civil offense punishable by up to a \$500.00 fine to be adjudged by the magistrates division of the federal district courts. Injunctive relief could also be sought for second or additional violations in the federal district courts. The legislation would provide an absolute defense for the employer if the employer demonstrates reliance on certain prescribed existing identification as will be specified by the Attorney General by regulation. A simple record will be required to be kept by the employer on each employee containing the identification relied upon.

The Secretary of Health, Education and Welfare should improve the reliability of the social security card by increasing efforts to ascertain legal status upon issuance by increased cooperation with I.N.S. and state and local governments.

Draft Legislation

Proposed legislation to effect the employment prohibition recommendations is attached hereto as Appendix A.

Costs

It is difficult to estimate the projected costs of the legislation involved in these recommendations because of the difficulty in assessing the breadth of violations and thus the enforcement strategies that would be required pursuant to the Act. Cost estimates made by the House Judiciary Committee for their previous criminal sanction legislation were based on greater anticipated personnel needs than the "civil penalty/absolute defense" plan herein. The estimated cost of the employer legislation sanction scheme proposed would require approximately 117 additional positions, and cost a total of \$2,400,000. This would provide for 65 additional investigators (\$1,440,000); 27 immigration examiners (\$460,000); 25 clerks (\$252,000); detention of witnesses (\$40,000) and publicity (\$200,000).

APPENDIX

Legislation containing employer sanctions and introduced by Chairman Rodino was passed in the House of Representatives, but not in the Senate, in the 92nd and 93rd Congress. Again in the 94th Congress, the House Judiciary Committee reported a bill providing for both civil and criminal penalties. This measure was never voted on by the full House. Chairman Eastland introduced employer sanction legislation in 1976, but with no criminal penalties. The issue of criminal penalties -- along with Chairman Eastland's unwillingness to support legislation without a provision for liberalized importation of temporary labor -- has impeded such legislation in the Senate.

RELIEF FOR UNDOCUMENTED
ALIENS IN THE U.S.

RELIEF FOR UNDOCUMENTED ALIENS IN THE UNITED STATES

A. Basis for Relief

Another fundamental component of our proposal is the granting of legal status to those undocumented aliens currently in the United States who have built up equities in our society such as family or residence. Significant numbers of undocumented aliens have been in the United States for substantial periods of time during which they may have had children who are United States citizens by birth and have established residence without legal status. For all practical purposes they have become permanent members of our society. We have concluded that aliens meeting certain conditions should have the opportunity to follow that avenue which could in five years result in United States citizenship. Accordingly, the Immigration and Nationality Act would be amended to provide that an alien in the United States without documentation or without proper documentation could apply to the Immigration and Naturalization Service for the status of a lawful permanent resident by meeting certain conditions.

B. Condition for Permanent Resident Status

The first condition necessary for an undocumented alien to become a lawful permanent resident is that the alien must have been in the United States prior to a certain date to be set by the President in the proposed legislation. It would be preferable to choose a past date in order to prevent fraudulent acts by aliens not otherwise qualifying under the language of the legislation.

Aliens in this country could qualify for permanent resident status by coming under one of two conditions: If an undocumented alien is the parent, spouse or child of a United States citizen or a permanent resident and resides continuously in this country subsequent to the effective date of the Act, then that alien can qualify to register for permanent resident status. If an undocumented alien does not have one of those family ties, then that alien must have been in this country five consecutive years immediately preceding the prescribed effective date. Whether an undocumented alien qualifies by the family relationship or by the time period, the alien must not be inadmissible to the United States under the most serious qualitative bars to admission - those relating to criminals, procurers and other immoral persons, subversives, violators of narcotics laws, or smugglers of aliens.

The importance of the time period for residency to the proposal should be emphasized. Although the exact number of undocumented aliens in this country is not known, there are accurate figures on the apprehension of undocumented aliens since 1968. These figures show a sharp increase each year over the preceding year of undocumented aliens apprehended. Inasmuch as the INS experience indicates that two to three times the number of persons evade apprehension as are caught, it is reasonable to assume that the increase each year in numbers of apprehensions indicates an increase each year in those undocumented aliens who evade apprehension and settle in this country. Accordingly, if the number of years of residency requirement is small, the number of aliens under this program increases dramatically.

C. Aspects of Implementation

The programs would not be mandatory. An undocumented alien would not have to register for permanent resident status. Those aliens who did not choose to exercise their right would not be deportable and would remain in this country legally for as long as they choose.

1. Employment of Affected Aliens

Aliens who registered for permanent resident status by an INS office would be given proper papers to authorize their working. Their date of registration would be the date of the creation of a record.

Aliens who did not register but who qualified for permanent resident status would have to obtain a different paper from an INS office allowing them to work. Neither category would be subject to the labor certification requirements.

2. Other Considerations

Various categories of aliens will be affected:

(a) Refugees -- Refugees who are presently in this country pursuant to having been granted special permission by the Attorney General and who meet the requirements would qualify.

(b) Undocumented Aliens Married to Qualified Aliens -- In some cases where there are married undocumented aliens without children and only one spouse has been in the country for five years, then the other spouse will be allowed to remain, in the exercise of the Attorney General's discretion, and in due course will become eligible for legal status through the principal spouse.

(c) Spouses and Children Out of the Country -- When the alien obtains lawful permanent resident status, he is able under existing law to confer a visa number preference on his spouse and unmarried children. Consideration was given to waiving numerical limitations for these aliens, but it was judged that this would discriminate unfairly against those aliens waiting their turn at the American consulate who are the spouses and children of resident aliens who have complied strictly with the general immigration laws. Therefore, spouses and children outside of the country applying for admission would be counted against the numerical limitation of 20,000 persons per year per country. There is the possibility that requiring these aliens to obtain visa numbers may create serious delays in visa availability. However, since we do not know the size of the problem it is preferable to wait to recommend a remedy.

(d) Student and Exchange Aliens -- Aliens in the United States who originally entered as students or as participants in educational or cultural exchange programs would qualify if they met the relationship or residence criteria. This could bring complaints from foreign governments that this practice is a drain on their human resources. The total number, however, of such aliens is not large compared to the grand total of nonresident aliens in the United States. Many of those who meet the relationship criteria would also be able to qualify for permanent residence under the regular immigration provisions. The number who meet the residence requirement would be relatively small.

A compromise proposal for excluding students relates to exchange program participants. Some such participants are subject to a requirement to return home for two years before becoming eligible for permanent residence. Those possessing skills clearly required in their country and those financed either by the United States or the government of their country are subject to that provision. Therefore, if it were determined to deny benefits to any category of students, it would seem appropriate to deny benefits to this group because of the prohibition elsewhere.

We are presenting this subsection on students as an option and have attached two separate proposed bills -- one excluding the selected exchange participants and one without such a provision.

D. Costs

The experience with past voluntary adjustment programs would indicate that the bulk of applications will be spread out over a number of years rather than coming immediately after enactment.

Assuming that approximately 500,000 aliens would apply annually under this provision, the Immigration and Naturalization Service will require an additional 100 officers and 200 clerical personnel, at a cost of approximately four million dollars annually, until the bulk of eligible aliens is processed.

E. Alternative Legal Status to Undocumented Aliens Considered

Two alternatives to giving undocumented aliens with equities an opportunity for immediate adjustment to lawful permanent resident status were considered. These were: (1) nondeportable status, and (2) nondeportable status with an opportunity for later adjustment to lawful permanent resident status.

1. Nondeportable Status

Placing undocumented aliens with equities in a nondeportable category without providing any special method for adjustment to lawful permanent resident status might reduce the administrative costs imposed by the procedure for immediate adjustment in the short run. This status would prevent aliens from bringing in relatives from abroad. On the other hand, the status of such nondeportable aliens would be ambiguous. Since they could not look forward to attaining United States citizenship, they would lack political rights and would probably never be fully integrated into our society. The problem of having large groups of aliens outside the mainstream of our society was one of the primary factors supporting the development of an amnesty program. The mere creation of a large class of nondeportable aliens would do little to remedy this problem and would cause resentment in the ethnic community.

2. Nondeportable Status with Waiting Period before Registration for Permanent Resident Status

Another alternative considered was to place undocumented aliens with equities in a nondeportable category for an interim period and offer them an opportunity to adjust to lawful permanent resident status later. A disadvantage of this system is that the nondeportable aliens would have to be documented in some manner. Problems might arise because the procedures for readmitting lawful permanent resident aliens after temporary journeys abroad would not be applicable to readmitting nondeportable aliens in most cases. Eventually, all aliens who wished to change their legal status would be examined in the same manner as in the program for

registration to permanent resident status. In the long run the administrative costs of this alternative would be more than the costs of the recommended program. Deferred adjustment would present a significant disadvantage of delaying the complete integration of undocumented aliens into our society.

Summary of Recommendations

We recommend a program providing for the assimilation of large numbers of undocumented aliens into this society. The program affords the option to the alien to attain full rights of citizenship eventually or merely to remain and work legally in this country.

The program is manageable in that it does not require persons to appear in large numbers within a given time at government offices in most instances. The costs are estimated on past experience with similar voluntary programs at four million dollars per year and would add 300 additional employees to INS.

Although immediate family members will be able to reunite, a large number of persons outside the country could conceivably enter through their family relationships. The possible consequences of this multiple effect of this program on local communities are discussed elsewhere.

ENFORCEMENT

ENFORCEMENT

A. Introduction

The flow of undocumented aliens into the United States had two major components. One, the migration of Mexicans across our southern border into the southwestern part of the United States, has a long history. The other, a more recent development, is the movement of significant numbers of individuals from a number of developing Caribbean, Central and South American, and Asian countries into the industrial centers of the Northeast and Midwest.

The traditional Mexican flow is made up of large numbers of individuals who enter surreptitiously between designated ports of entry along the United States-Mexican border. Typically, they are young with minimal skills and education and tend, at least initially, to leave their families in Mexico. Due to the large differential in income between our countries (the largest between two contiguous nations in the world), they can often save enough in three to six months of work in the United States to support a family in the rural villages of Mexico for a year. Several studies have shown that generations of families and thousands of towns depend for their existence on the remittances from this migration pattern. However, it is clear that while a certain percentage of Mexican migrants may settle in the United States over time, significant numbers travel back and forth with frequency and ease.

The second migration stream is made up of persons coming through air and land ports of entry who obtained visas by fraud or misrepresentation, entered with altered or counterfeited visas, or used valid documents but thereafter violated status by working illegally. INS estimates that perhaps as many as 300,000 of the 6,300,000 visitors who entered the United States on nonimmigrant visas in 1975 have remained here in violation of the provisions of their visa.

The visa abusers who have entered as temporary visitors may go to considerable lengths to misrepresent the purpose of their visit to the United States, including making false statements during interviews and presenting fraudulent documents. They are often aided by questionable "educational institutions" in the United States which sponsor "students" who actually intend to work rather than attend school.

The demand for nonimmigrant visa has tripled in the past decade, and our embassy consular sections are often under intense pressure. Consular officers reviewing visa applications seek to promote freedom of travel by issuing visas to legitimate travelers as rapidly as possible, but they are repeatedly faced with the difficult task of determining the applicant's real intentions and the truth of his statements.

In recent years, the Immigration and Naturalization Service (INS) makes about three quarters of a million apprehensions per year. Many enforcement experts believe that at least twice that number successfully avoid detection, although it is unclear how many remain in the

United States only temporarily or enter more than once a year. Due to the present allocation of enforcement resources, approximately 95 percent of those apprehended are Mexican. Studies have shown, however, that the undocumented alien flow as a whole is very likely 60 percent Mexican and 40 percent non-Mexican.

B. Recent Developments

While the bulk of INS enforcement efforts continue to be concentrated on the Southwest border, the INS no longer relies heavily on neighborhood-oriented enforcement operations, or "roundups," because they have not been particularly successful and cause tensions in the communities. At this time, the emphasis is on locating and apprehending undocumented aliens at the workplace in order to lessen their impact on the labor market.

From 1969-74, INS received nominal increases in resources while some of its workload was increasing by as much as 200 percent. Since 1974, INS gained a considerable infusion of manpower and funding and has experimented with a number of concepts to improve overall enforcement. These increases amounted to 1500 personnel and \$50 million, bringing the INS FY 78 total to about 9,600 personnel and \$250 million. In spite of its additional funds and manpower, INS has been unable to cope with the growing problem of illegal immigration.

The Department of State has responsibility for visa issuance abroad. It has received considerable additional resources in recent years to cope with increased visa workloads. Resource increases, however, have not kept pace with caseload increases. From FY 1974 to FY 1976, for example, personnel resources available for the visa function abroad were increased 11 percent (from 1242 to 1381 manyears of employment) while caseloads increased 19 percent (from 3,900,000 to 4,500,000).

In addition to the border workload increases, enforcement has also suffered from bureaucratic rivalries among the U.S. government agencies involved in border enforcement. Competing aims of these various agencies have often prevailed over enforcement considerations. These questions are under active review in connection with reorganization efforts within the Administration.

C. Prevention

A prevention strategy seeks to deter potential entrants in sending countries. It is also the most efficient use of resources and the least offensive to ethnic communities within the United States. Finally, it is an important supplement to the employer sanctions and amnesty proposals made here.

However, there are important countervailing considerations. For example, strict port of entry enforcement impinges on tourism and is believed to discourage bona fide entrants. The most serious concern rests with intensified enforcement on the Mexican border.

If the movement of Mexicans into the United States for work purposes is significantly slowed, some experts argue we would need to substitute a form of temporary worker program in order to avoid serious social and political tensions in Mexico caused by adding to that country's already high unemployment rate. While such results cannot be predicted, it is clear that migration has served as an important stabilizing force over past decades.

Conversely, United States communities, particularly those at the border, are dependent upon the undocumented alien who spends, according to several studies, 40-60% of his income in the United States. These traditionally depressed communities are economically bound to the illegal cross-border movements as well as to legitimate intra-country trade and interchange which they believe will be inhibited by strict enforcement.

D. Recommended Program

In addition to the employer sanction proposals already made, we recommend a strong enforcement policy based on prevention.

1. Prevention Strategy

A maximum effort would require considerable increases in enforcement personnel along the border and at major ports of entry. This concept has some precedent in Operation Intercept which took place in late 1969. In that operation, the government was able effectively to seal off the border by flooding it with enforcement personnel.

a. Denial of Entry at Ports

This effort would require improving the quality and thoroughness of the immigration inspection process, without causing undue delay to entrants. It would be done by,

- selecting for in-depth inspection additional "high risk" flights -- that is, flights likely to have passengers entering for illegal purposes;
- scrutinizing more closely entry papers and supporting documentation;
- increasing the number of manned inspection points;
- increasing training of customs inspectors in immigration law and procedures;
- utilizing more inspection areas for greater in-depth processing; and
- emphasizing the full implementation of secure alien identification cards and related automated systems.

b. Apprehensions Between Southern Ports-of-Entry

This effort would require the latest communications technology including secure voice radios and expanded mobile communications capability tying together airborne and ground personnel. It would utilize a second line of electronic sensors and complementary radar and human identification equipment. An improved observation capability and a fully operational helicopter

unit to intercept aliens who have crossed the border and are moving toward the interior would be used. In addition, fencing and accompanying high intensity lighting units are needed. This equipment would be supported by a fully-equipped border patrol force employing night viewing devices and undercover vehicles. Specifically, it will mean doubling the current patrol force at the four principal entry sectors: Chula Vista and El Centro, California; El Paso, Texas; and Yuma, Arizona.

c. Anti-Smuggling Program

This effort would be composed of units of investigators devoted solely to apprehending and deterring organized smuggling rings which move aliens into our interior urban areas.

d. Overseas Operation

A maximum effort would also require significant increases in personnel available for screening functions at Foreign Service posts. These additional personnel would permit an even more exhaustive increase in the length and number of personal interviews required in processing nonimmigrant visa applications.

E. Summary of Recommendations

We recommend a strong enforcement policy based on prevention. This will require an increase of 2200 positions and a cost of about \$98 million over a two-year period.

FOREIGN AFFAIRS

FOREIGN AFFAIRS

The program to diminish the flow of undocumented aliens to the United States has important foreign policy implications and to be successful will require action in some fields by foreign governments. The foreign reaction to the announcement of the program could be strongly negative, particularly in Mexico and the Caribbean states. To avoid damage to our other foreign affairs interests with them, it is important that we consult with these countries through diplomatic and other channels beforehand to elicit their understanding and cooperation.

For long-term success, our program must also deal, to the extent possible, with the "push" factor that impels aliens to enter the United States illegally -- i.e., the lack of employment opportunities in their countries -- from which most of the illegal migration comes. We must recognize that the imposition of effective immigration restrictions will shut off an important escape valve for our Latin neighbors and could lead to destabilizing social, economic and political pressures there.

While the development of their economies is primarily the responsibility of the countries involved (Mexico, the Caribbean, and Central America), we can nevertheless encourage them to design and implement development plans that would provide greater employment opportunities for their population and thus ease the "push" factor. We have three main tools at our disposal to support such development.

The first tool is multilateral assistance through the international lending agencies. We can use our voting power to encourage the development of projects that will increase employment opportunities and upgrade our strong support for family planning efforts in this area.

Second, there is bilateral assistance through the Agency for International Development (AID). AID programs emphasize assistance to the poor or low income countries. Currently we have programs in Central America, in the non-English speaking Caribbean and a modest program in the English-speaking Caribbean, largely through the Caribbean Development Bank. However, special consideration could be given to increasing development assistance to generate local employment and improve family planning for English-speaking islands of the Caribbean which have relatively high average per capita incomes but nevertheless produce large numbers of illegal immigrants. Additional assistance for these purposes could also be considered for Central American countries. This would require some increase in overall assistance levels.

Third, we can encourage the development of employment opportunities in these countries by providing greater, perhaps preferential, access to U.S. markets for their labor-intensive products, both agricultural and manufactured. The Mexicans have been particularly insistent that greater access to our market is critical to their plan to develop increased employment opportunity in Mexico. Whereas it may be true that this would be a useful way to help alleviate the "push" from Mexico, we must recognize that such proposals will involve tariff

reductions and other measures that will adversely affect U.S. production and consumers and which will evoke strong protests from affected segments of United States industry, agriculture, and labor.

Summary of Recommendations

1. The Department of State should undertake consultations with Mexico and other nations most seriously affected by our program (e.g., Haiti, Jamaica, and the Dominican Republic) as soon as its basic outlines are set and before it is made public.

2. The criteria applied by the United States Government for assessment and approval of loan proposals by international lending institutions should be reviewed with the goal of providing greater weight for the development of employment opportunities in the countries from which the bulk of the undocumented aliens come.

3. The budget for FY 1978 should be augmented for development assistance programs in the Caribbean and Central America which have high out-migration rates. This money would be spent to stimulate job-providing development projects and could increase aid by 25-50% in certain countries.

4. An immediate review should be undertaken by State, Treasury, Commerce, Labor and the Special Trade Representative to determine whether it is feasible to increase the access of labor-intensive products from out-migration countries, particularly Mexico, to the U.S. market in light of dislocations which may occur in the United States.

5. High priority should be given to follow-up work agreed upon by you and President Lopez Portillo at your recent meeting to develop approaches to the full range of U.S.-Mexico issues including undocumented aliens.

CERTIFICATION OF
ALIEN WORKERS

CERTIFICATION OF ALIEN WORKERS

The United States has traditionally allowed some aliens to enter and work legally in this country. The number of such admittances has varied considerably over time. The workers have normally fallen into two categories: (a) legal immigrants who enter to fill permanent jobs and (b) nonimmigrant aliens who enter to fill temporary jobs. The criteria by which these individuals are certified have an important bearing on the question of undocumented aliens because allowing an increased number of legal admissions in either of the categories would most likely reduce the pressures for illegal immigration.

In 1976, approximately 50,800 work certifications were issued; 25,600 to permanent immigrants, 10,000 to temporary workers in non-agricultural industries and 15,200 to temporary workers in agricultural industries. In principle, these certifications were made only after a determination by the Labor Department that allowing the entrant to work would not have an adverse effect on domestic employment opportunities. In fact, however, an entirely accurate determination of this impact is impossible since it would require checking with every domestic worker to see if he or she is qualified for and would accept the job in question. Because of this problem rough rules of thumb are normally used in the certification process in order to determine labor market impact.

It is noteworthy that the total number of certifications issued in 1976 was quite low relative to the probable flow of undocumented

aliens. Thus the labor market dislocation resulting from certified entrants must be judged as minor. However, it is also true that the number of permanent immigrants who are certified represents only a small fraction of the total number of permanent immigrants who enter the country and work (about 200,000 annually) since the vast majority of legal immigrants enter under family preferences with no consideration of potential labor market impact.

There are also serious difficulties involved in the certification of temporary workers. Critics contend that since under current regulations these workers are contracted to one employer before they are certified, the practice represents a type of indentured servitude that is contrary to American principles and offers the potential for exploitation. Furthermore, the presence of such workers is said to depress wages and working conditions for non-alien workers. If the job is judged unacceptable to domestic workers because of low wages and/or poor working conditions, it may be because alien workers were willing to fill it in the past at these substandard conditions. In effect, the employment of alien workers may be a phenomenon which justifies and perpetuates itself. Additionally, employers have sometimes been found to have made only cursory efforts to recruit domestic workers because they find the work habits of the aliens preferable. Despite intense political pressures, the Labor Department has, in order to protect the interests of domestic workers, maintained a conservative posture towards the certification of temporary workers requiring convincing evidence that the labor market effects will not be adverse.

The current relationship between the number of aliens entering the country annually with labor certifications and the probable flow of undocumented aliens has not always existed. For example, from 1942-1964 large numbers of temporary agriculture workers were imported under the "bracero" program of contract labor. The size of the "bracero" program peaked between 1955 and 1959 when more than 400,000 temporary workers were admitted annually. This program had the same shortcomings discussed above; that is, the employee could work for only one employer and there were opportunities for exploitation. It was, however, a popular program with many employers who regarded it as a source of the sort of dependable low wage labor that is not available in domestic labor markets. Instituting a similar program, even without provisions tying workers to one employer, would be popular with both agricultural employers and, quite probably, the Mexican government although the Mexicans have in a recent policy change announced they will no longer seek such temporary worker arrangements. Additionally, such a program would likely reduce the pressure for illegal immigration.

Pressure to allow nonimmigrant aliens into the country to fill temporary jobs often results from legitimate employer concerns about procuring a satisfactory work force within a reasonable time frame. Additional efforts can be undertaken to respond to these concerns without the need for more resources. Employment outreach efforts can be organized to seek out more actively workers who would be willing to take the jobs in question. Experience has demonstrated, for example, that workers can often be found by taking the simple step of looking

for them outside of the immediate geographical area. Additionally, recent studies have demonstrated that work on unattractive jobs can sometimes be reorganized (rationalized in the language of labor economists) to improve pay and working conditions without raising per unit labor costs. These approaches may have the advantage of lessening political pressures to certify temporary workers. If outreach and labor market rationalization efforts fail to produce a reliable work force and negotiations regarding labor standards are met, temporary alien workers should be certified.

It should also be noted, however, that employers sometimes have illegitimate motives for requesting temporary alien workers. For example, employers at times have indicated a preference for foreign labor because the workers will accept conditions and pay U.S. workers will not or because social security taxes can be evaded. Careful efforts must be undertaken to sort out legitimate and illegitimate employer concerns in this area.

Summary of Recommendations

We recommend continuing the current policy of limiting the number of temporary worker certifications issued in order to protect the interests of American workers. We suggest additional efforts in the area of employment outreach and labor market rationalization as a means of responding to legitimate employer concerns in this area.

Budget Impact

None.

UNDOCUMENTED ALIENS AND
COMMUNITY ASSISTANCE

UNDOCUMENTED ALIENS AND COMMUNITY ASSISTANCE

State and local governments, particularly those in areas thought to have large undocumented alien populations, currently claim that the presence of such individuals imposes on them substantial fiscal burdens. Likewise, the Federal government itself may bear certain additional costs because of the presence of this population group. The granting of any form of "amnesty" could certainly intensify the pleas and perhaps the real need for increased expenditures especially with respect to income maintenance, health care, education, public safety and the justice system.

The primary rationale for state and local requests for aid lies in the proposition that the regulation of immigration is an activity which the Constitution has reserved exclusively for the Federal government. The contention of many State and local governments is that whatever fiscal problems occur are caused by the Federal government's policy -- or absence of policy -- toward undocumented aliens. For example, it is pointed out that undocumented aliens are probably not counted for purposes of developing the distribution formula under the general revenue sharing program.

Because of the very nature of the problem, we lack sufficient data accurately to measure the present fiscal impact which undocumented aliens may have on various units of State or local government. We believe that the average undocumented alien possesses characteristics which make it

unlikely that the existing population of undocumented aliens creates any sizeable financial burden. Undocumented aliens are typically young, have no spouse or children, and are employed. It is unlikely therefore that these individuals place any substantial burden on State or local social services agencies. Nor would such persons be major recipients of income maintenance or health care programs because this type of financial assistance is available only to those citizens or other persons in the U.S. under color of law who are aged or disabled, single parent families with children, or, in only half the States, intact families with children and an unemployed father. Furthermore, young adults are not heavy consumers of health care and would not be a major burden on health services financed solely by State or local governments.

It must also be recognized that the Federal government itself bears some fiscal burden for the present population through such programs as food stamps, the provision of legal services by Legal Services Corporation agencies, and through the criminal justice system generally.

The future fiscal impact of undocumented aliens will depend upon the nature of the status which is granted these persons. If a decision is made to grant legal immigrant status, we believe there may be an important fiscal impact because those persons granted this form of status will be permitted to have their spouses and children reunited with them in the U.S. This result will certainly increase the ardor of those state and local governments which feel they are bearing an unfair burden. We saw

clear evidence of the political effectiveness of State and local governments when they were able to secure Congressional enactment of special Federal assistance programs for Cuban refugees and, more recently, for Southeast Asian refugees. The Cuban refugee program has assisted 465,000 persons at a cost to the Federal government of \$1.25 billion since 1963. The Southeast Asian program has cost \$203 million and has assisted approximately 145,000 refugees since 1975.-

On the Federal level, the influx of spouses and children could well qualify some individuals for income maintenance and health care assistance (depending, of course, upon what decisions are made to bring about reform in these two areas). Additionally, the employer sanction and amnesty program will add certain costs to the justice system: a possible major increase in the use of Legal Services Corporation attorneys in civil immigration disputes and generally because of a recognition of the availability of legal rights; an increase in the utilization of attorneys under the Criminal Justice Act if more violators are apprehended through our greater enforcement efforts; and a possible increase in the entire law enforcement apparatus if persons resort to crime because they cannot find jobs but do not qualify for welfare and yet decide not to return to their native country.

Recommendation

Because of the difficulty of estimating the impact of the amnesty program, we believe that you should acknowledge that the problem could

become a difficult one for certain units of State and local government as well as for the Federal government itself. In view of these possibilities, you should assure that alternative approaches are examined within the context of existing Federal financial assistance programs and special new programs should be considered as more facts are developed. Administrative proposals with respect to welfare reform and health care financing will also bear on this issue.

A mechanism to deal with these and related problems arising from your program on aliens should be established within the Executive Office of the President. It is not necessary to hire new assistants or provide new facilities. It will be necessary for there to be a designated "President's representative" to be responsive to such concerns, inform the President of them, and assist localities in dealing with their new problems in this field.

IMMIGRATION POLICY

IMMIGRATION POLICY

The immigration policy of the United States is based on the Immigration and Nationality Act of 1952, enacted by the Congress over President Truman's veto. The basic statute has been amended many times, most extensively in 1965 and 1976.

In many respects the law is out of date, contradictory, and difficult to administer. There is a clear need to develop a new immigration policy that will reconcile our commitment to humanitarian principles and our heritage as a nation of immigrants with the fundamental economic, social, political, and demographic realities of American life.

On April 26, Congressman Joshua Eilberg, Chairman of the Subcommittee on Immigration, Citizenship, and International Law, introduced a bill calling for the establishment of a select commission on immigration and refugee policy. The purpose of the select commission is to conduct a complete and detailed review of our immigration policy. (A copy of this bill is attached as Appendix C.)

Recommendation

We recommend that you strongly endorse Mr. Eilberg's proposal.

APPENDIX A

A Bill

To amend the Immigration and Nationality Act.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled. That
this Act may be cited as the "Alien Employment Act of 1977."

RESTRICTION OF EMPLOYMENT OF ALIENS

Sec. 2. (a) Section 274 of the Immigration and Nationality Act (8 U.S.C. §1324) is amended --

(1) by inserting after subsection (b) the following new subsection:

"(c) (1) It shall be unlawful for any employer to employ any alien in the United States who has not been lawfully admitted to the United States for permanent residence, unless the employment is authorized by the Attorney General.

"(2) Any employer who unlawfully employs any alien in violation of paragraph (1) shall be subject to a civil penalty of not more than \$500 for each alien in respect to whom any violation of paragraph (1) is found to have occurred.

"(3) From a date to be determined by the Attorney General by regulation, all employers who employ persons within the United States shall maintain a record with

respect to each person employed subsequent to that date. That record shall indicate the name of the employee, the date of employment and a description of the identification documents furnished by the employee and relied on by the employer as evidence of the employee's eligibility to be employed. Identification documents sufficient to provide an employer with an absolute defense to an action under this subsection shall be determined by the Attorney General by regulation.

"(4) The production by an employer of a record prescribed by paragraph (3) for an employee employed subsequent to the date established under paragraph (3) shall constitute an absolute defense to any action brought by the Attorney General under this subsection. Such records shall be maintained by every employer on every employee currently employed and for 90 days after termination of employment and shall be made available to the Attorney General or his agents charged under subsection (b) of this section with enforcement of this section. Upon request, an employer will furnish to the Attorney General or his agents a complete list of all persons then in its employ or having been in its employ within the preceding 90 days who entered that employment status subsequent to the effective date of this Act.

"(5) Upon determination that cause exists to believe that an employer has violated this subsection, the Attorney General shall bring a civil action in the United States District Court in the District in which the employer is alleged to have violated this subsection. This action shall be tried before a federal magistrate without a jury, who shall have the power to assess a civil penalty of up to \$500 for each alien employed by the employer for whom the employer is unable to produce the record prescribed by paragraph (4). A hearing, if demanded by the employer or the United States, shall be of record.

"(6) No direct appeal from the decision of the magistrate shall be available to the employer. The United States may, within 30 days of a decision adverse to the Government, seek review of a magistrate's decision by the United States District Court. The court shall accept the magistrate's findings of fact if supported by substantial evidence on the record taken as a whole. If the employer against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in an order entered by a federal magistrate, the Attorney General shall file a civil action to collect that penalty in that same United States District Court. Such suit shall be determined solely upon

the record before the magistrate, and the magistrate's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(7) After any employer is finally adjudged to be in violation of this subsection, the Attorney General may, within two years of that final judgment, bring an action in the appropriate United States District Court for injunctive relief should he have reason to believe that that employer continues to be in violation of this subsection, whether that violation is occurring within the District in which the final judgement was entered or within any other District. This action shall be tried in a United States District Court, which shall have jurisdiction to grant appropriate injunctive relief. The appropriate District Court shall be the same District Court in which the final judgment against that employer was entered or the District Court in any other District in which that employer is believed to be in violation of this subsection."

(2) by inserting after new subsection (c) the following new subsection:

"(d) This Act and the provisions contained therein are intended to supplement State action and compliance with this chapter shall not excuse anyone from compliance with appropriate State law and regulations."

APPENDIX B
OPTION 1

A Bill

To amend the Immigration and Nationality Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Alien Adjustment Act of 1977."

RECORD OF ADMISSION FOR PERMANENT RESIDENT IN THE
CASE OF CERTAIN ALIENS

Sec. 2. Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259) is amended to read as follows:

"(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien physically present in the United States on the effective date, if no such record is otherwise available and such alien satisfies the Attorney General that he:

(1) on the effective date, is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence or has resided in the United States for not less than five consecutive years immediately preceding the effective date;

(2) has resided in the United States continuously since the effective date; and

(3) is not inadmissible to the United States under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws, or smugglers of aliens.

"(b) Upon approval of an application under this section the Attorney General shall record the alien's lawful

admission for permanent residence as of the date of the application, except that in the case of an alien who entered the United States prior to July 1, 1924, and has resided here continuously since that date the Attorney General shall record the alien's lawful admission for permanent residence as of the date of entry.

"(c) A record of lawful admission for permanent residence as of the date of application may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien who as of the effective date is the parent, spouse or child residing in the United States with an alien whose lawful admission is recorded under paragraph (b) of this section if:

(1) the relationship of parent, spouse, or child existed on the effective date and continues to exist; and

(2) the parent, spouse, or child meets the qualifications specified in paragraph (3) of subsection (a).

"(d) This section shall not apply to any alien who advocated or assisted in the persecution of any person or group of persons because of race, religion, nationality or political opinion."

Sec. 3. Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is amended by inserting after subsection (f) the following new subsection:

"(g) A deportation proceeding shall not be instituted on a ground arising prior to the effective date against an alien who meets the qualifications set forth in subsection 249(a), regardless of whether or not the alien has submitted an application under that section."

Sec. 4. Section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151(a)) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives of United States citizens as specified in subsection (b) of this section, and of aliens in whose case a record of lawful admission for permanent residence is made pursuant to section 249, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and shall not in any fiscal year exceed a total of 170,000; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000."

Sec. 5. The term "effective date" as used in section 249 on the Immigration and Nationality Act, as amended by this Act, shall mean

APPENDIX B
OPTION 2

A Bill

To amend the Immigration and Nationality Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Alien Adjustment Act of 1977."

RECORD OF ADMISSION FOR PERMANENT RESIDENT IN THE
CASE OF CERTAIN ALIENS

Sec. 2. Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259) is amended to read as follows:

"(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien physically present in the United States on the effective date, if no such record is otherwise available and such alien satisfies the Attorney General that he:

(1) on the effective date, is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence or has resided in the United States for not less than five consecutive years immediately preceding the effective date;

(2) has resided in the United States continuously since the effective date; and

(3) is not inadmissible to the United States under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws, or smugglers of aliens.

"(b) Upon approval of an application under this section the Attorney General shall record the alien's lawful

admission for permanent residence as of the date of the application, except that in the case of an alien who entered the United States prior to July 1, 1924, and has resided here continuously since that date the Attorney General shall record the alien's lawful admission for permanent residence as of the date of entry.

"(c) A record of lawful admission for permanent residence as of the date of application may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien who as of the effective date is the parent, spouse or child residing in the United States with an alien whose lawful admission is recorded under paragraph (b) of this section if:

(1) the relationship of parent, spouse, or child existed on the effective date and continues to exist; and

(2) the parent, spouse, or child meets the qualifications specified in paragraph (3) of subsection (a).

"(d) This section shall not apply to:

(1) Any alien who advocated or assisted in the persecution of any person or group of persons because of race, religion, nationality or political opinion; or

(2) Any alien who is subject to the provisions of section 212(e) of this Act."

Sec. 3. Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is amended by inserting after subsection (f) the following new subsection:

"(g) A deportation proceeding shall not be instituted on a ground arising prior to the effective date against an alien who meets the qualifications set forth in subsection 249(a), regardless of whether or not the alien has submitted an application under that section."

Sec. 4. Section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151(a)) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives of United States citizens as specified in subsection (b) of this section, and of aliens in whose case a record of lawful admission for permanent residence is made pursuant to section 249, (1) the number of aliens born in any foreign state or dependent area located in the Eastern Hemisphere who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and shall not in any fiscal year exceed a total of 170,000; and (2) the number of aliens born in any foreign state of the Western Hemisphere or in the Canal Zone, or in a dependent area located in the Western Hemisphere, who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, or who may, pursuant to section 203(a)(7), enter conditionally, shall not in any of the first three quarters of any fiscal year exceed a total of 32,000 and shall not in any fiscal year exceed a total of 120,000."

Sec. 5. The term "effective date" as used in section 249 on the Immigration and Nationality Act, as amended by this Act, shall mean

APPENDIX C

CONGRESS
1st SESSION

H.R.

Joseph Eilberg
(Original signature of Member)

IN THE HOUSE OF REPRESENTATIVES

Mr. Eilberg introduced the following bill; which was referred
to the Committee on

A BILL

To establish a Select Commission on Immigration and Refugee Policy.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled, That
(a) there is established a Select Commission on Immigration
and Refugee Policy (hereinafter in this Act referred to as
the "Commission") which shall be composed of--

(1) four members appointed by the President, one
of whom shall be designated by the President as Chair-
man;

(2) the Secretary of State, the Attorney General,
the Secretary of Labor, and the Secretary of Health,
Education, and Welfare;

(3) four members appointed by the Speaker of the House of Representatives from the membership of the House Committee on the Judiciary; and

(4) four members appointed by the President pro tempore of the Senate from the membership of the Senate Committee on the Judiciary.

(b) A majority of the Commission shall constitute a quorum for the transaction of its business, but the Commission may provide for the taking of testimony and the reception of evidence at meetings at which there are present not less than four members of the Commission.

(c) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of \$100 for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses, when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, when away from his usual place of residence, in accordance with chapter 57 of title 5, United States Code.

Sec. 2. (a) It shall be the duty of the Commission to study and evaluate, in accordance with subsection (b), existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate.

(b) In particular, the Commission shall--

(1) conduct a study and analysis of the effect of the provisions of the Immigration and Nationality Act (and administrative interpretations thereof) on (A) social, economic, and political conditions in the United States; 2 (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy;

(2) conduct a study and analysis of whether and to what extent the Immigration and Nationality Act should apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States;

(3) review, and make recommendations with respect to, the numerical limitations (and exemptions therefrom) of the Immigration and Nationality Act on the admission of permanent resident aliens;

(4) assess the social, economic, political, and demographic impact of previous refugee programs and review the criteria for, and numerical limitations on, the admission of refugees to the United States;

(5) make semiannual reports to each House of Congress during the period before publication of its final report (described in paragraph (6)); and

(6) make a final report of its findings and recommendations to the President and each House of Congress, which report shall be published not later than September 30, 1980.

(c) The Commission is authorized to appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions without regard to the civil service laws, rules, and regulations. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission, and such detail shall be without interruption or loss of civil service status or privilege.

(d) Staff members of the Committee on the Judiciary of the Senate or of the Committee on the Judiciary of the House of Representatives may be detailed to serve on the staff of

the Commission by the Chairman of the respective committee. Staff members so detailed shall serve on the staff of the Commission without additional compensation except that they may receive such reimbursement of expenses incurred by them as the Commission may authorize.

(e) The Commission may call upon the head of any Federal department or agency to furnish information and assistance which the Commission deems necessary for the performance of its functions, and the heads of such departments and agencies shall furnish such assistance and information, unless prohibited under law, without reimbursement.

(f) The Commission is authorized to make grants and enter into contracts for the conduct of research and studies which will assist it in performing its duties under this Act.

Sec. 3. The Commission shall cease to exist upon the filing of its final report, except that the Commission may continue to function for up to sixty days thereafter for the purpose of winding up its affairs.

Sec. 4. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Sec. 5. The provisions of this Act shall become effective on October 1, 1978.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM:

Jack Watson
Jane Frank

May 2, 1977

RE:

Undocumented Aliens

We have comments on the basic parts of this proposal, and then some general observations.

I. Employer Sanctions Proposals

This section occupied a large part of the time spent by the Task Force. Substantial debate occurred on the subject of forge-proof Social Security cards and the civil liberties ramifications of this. As they presently stand, the recommendations do not move us closer to the forge-proof card. As you can see, they stress enforcement of existing law, the enactment of civil penalties on employers, and the use of existing identifiers as a means of protecting employees and employers accused of violating the law. In our view, if you want to have employer sanctions, then these proposals are about as good as you can get.

You must be aware, however, that there probably is no way to prevent prospective employees from abusing the identification systems. This is true even if we have a counterfeit-proof card--since the documents used to get the card could still be forged and indeed some say the card itself could still be forged. Griffin Bell and Ray Marshall stress that making something illegal will put enormous pressure on employers particularly, and that most American citizens do not want to violate the law. They rely in essence on Americans' law-abiding nature and not on the proof system they propose to establish. While this may be wishful thinking, on balance we feel that their hypothesis is worth testing out.

II. Enforcement

These INS proposals have been floating around for years. There is great skepticism on the Hill and outside that they will work. Increasing the number of helicopters that patrol our borders troubles us. On the other hand, if we are serious about cracking down on illegals, it

May 2, 1977

makes sense to secure our borders as much as possible. Since there is a new INS Commissioner, it might be wise to delay implementation of these proposals until he can reassess their effectiveness; or, alternatively, you might approve a pilot project at one border cross-point for a lot less money and then provide the additional funds, after a year, if the pilot project works.

III. Amnesty

The task force felt it was properly a Presidential decision at what point the amnesty cut-off should occur. The tentative recommendation is five years back from the effective date of the law, but we urge you to consider a shorter cut-off. Our reason is two-fold: most illegal aliens have come into the country within the last five years, and an amnesty provision that cuts off at five years will not help them; related to this, if you don't grant amnesty to those entering the country within the last five years, you are immediately creating a class of approximately five million unemployable undocumented workers. On the latter point, the expectation is that these people would ultimately leave the country and go back to Mexico or wherever they came from. The problem in the meantime is that they could easily add to the crime problem.

IV. Foreign Policy Initiatives

In our view, this is the crucial part of the package, and needs strengthening. As the report describes, there are serious "push" factors from surrounding countries that force their poor classes to come to the United States for work. The only way to deal with these "push" factors is to improve economic and job conditions in the home countries of these people. These proposals would enable you to do that--through a mix of foreign aid and other initiatives. While we recognize that beefing up home industries could possibly have some adverse impact on our international trade picture, this impact is substantially outweighed by the negative impact that illegal employment has on our labor force at home. In candor, the State Department participation in the task force lacked the sense of urgency that the Justice and Labor Department people had. It would be enormously helpful if you could underscore the importance of these foreign policy initiatives, and direct those involved to carry them out promptly.

V. Certification

No comment.

VI. Financial Assistance

These proposals are extremely important, and will be of enormous interest to the Congress and state and local governments. One of the reasons so many are interested in a reform package here is because of the intolerable burdens on state and local--and indeed some federal--services placed by undocumented workers.

VII. Immigration Policy

This is another crucial area, and the proposal seems to us to be sound.

Beyond the specifics, we have a more general recommendation on consultation. In answer to a question at a recent press conference, you indicated you would have a "message" on undocumented workers in the near future. We respectfully suggest that you not announce this program in terms of a message to the Congress. If you send up the specifics of legislation in the near future without extensive consultation with domestic groups and foreign governments, we feel that your proposals will inevitably be divisive. In contrast to an issue like the energy plan where you clearly must take strong leadership and move the country along behind you, in this area a lot of what you must do is heal wounds, reunite families, and calm the tempers that have raged on both sides for years. Thus, we would suggest an announcement of "policy directions" by you at a round-table discussion out of Washington in an area--like San Diego--where a large part of the problem exists. Invited to that session would be representatives of all the major affected interest groups: labor, management, Mexican/American groups, state and local officials, federal officials, etc. If this announcement occurred soon--but not so soon that the State Department couldn't check out the dimensions with important foreign governments--we could then spend the summer months touching bases and be prepared with a legislative package in the early fall.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 30, 1977

TO: Rick Hutcheson
FROM: Peter G. Bourne *P.B.*
SUBJECT: Report of Task Force on Undocumented Aliens

My specific interest in the Task Force report is in the issue of border enforcement. It is not practical to address Federal efforts to stop drug smuggling or to prevent entry of illegal aliens as separate from other federal efforts to enforce border security. Our goal in border law enforcement should be to get the most from all of our resources by providing the best organization and management structure. This approach is supportive of all Federal programs which are dependent on effective border law enforcement. It also enhances the deterrent effect of strong border security.

As the report indicates (Page 30), I have a reorganization study underway to review the effectiveness and efficiency of our overall border control effort. Bureaucratic problems and overlap are evident and border management is a likely candidate for a major reorganizational effort.

My review, in coordination with Harrison Wellford and with representation from Justice, Treasury, Immigration, Customs and DEA, will include all Federal functions and resources associated with border management. I plan to present recommendations in early August for organizational or management improvements in overall border management. Even though added personnel and increased attention are probably necessary, it seems that we can also get significant improvement through some reorganization.

Looking ahead, a reorganization package in this area will be tough to sell to Congress and to the various special interest groups. It would be much easier to get a reorganization plan approved if it included a significant boost in resources to meet our alien problem. On the other hand, if you approve a specific increase in Immigration border enforcement, a later reorganization plan in the same area might appear to be fragmented management.

Memo To: Rick Hutcheson
From: Peter G. Bourne
Subject: Report of Task Force on Undocumented Aliens

Therefore, I recommend that you acknowledge the need for additional resources in the area of border law enforcement but defer a definitive statement on where they would be applied until we complete the reorganization study.

PGB:ss

THE WHITE HOUSE

WASHINGTON

April 30, 1977

MEMORANDUM FOR: THE PRESIDENT
FROM: HAMILTON ^{HJ}JORDAN / ARAGON
SUBJECT: TASK FORCE REPORT ON
UNDOCUMENTED ALIENS

CONCLUSION

There are numerous issues not fully dealt with in the task force report which, if not addressed, could render the new policy ineffective, counterproductive and complicate U.S./Mexico relations.

DISCUSSION

- (1) The amnesty proposal is generally sound with the following two qualifications:

(a) Under the plan, those who seek the benefits of the amnesty plan will have to apply to the INS and prove continuous residence or demonstrate how they otherwise qualify. What if they don't qualify? Are they then taken into custody and deported? If this possibility exists, then few if any will avail themselves of the opportunity. One solution might be to grant such applicants a limited (6 months?) nondeportable status to remove the stigma of application. A second solution might be to establish safe "clearinghouses" which would not subject applicants to possible deportation for simply having tried to comply with the law.

(b) It does not necessarily follow that an illegal alien will remain in the U.S. if not apprehended (see 6 below). The estimate of how many illegals have resided here continuously may be off by several million. If this is so, then the five year amnesty requirement may cover too few people to make the program viable. Thought should be given to shortening the time requirement to 4 or 3 years.

- (2) The imposition of civil penalties will do little good and possibly great harm.

Although organized labor favors these sanctions, I believe little will be gained by their promulgation. In fact, this approach represents the worst of both worlds. While on the one hand a mere \$500 penalty will not deter the exploiter of cheap labor, it does on the other hand give employers a ready excuse for discriminating against Latin job seekers. Such sanctions are also opposed by most Hispanic leaders.

If civil sanctions are imposed, they should be specifically geared to those categories of jobs and employers that organized labor is most concerned about.

- (3) Consultation with Mexico should take place before the policy is decided rather than after.

Contrary to the recommendations of the task force, I think it will be a grave mistake to consult with Mexico "after the basic policy decisions...are reached". The Republic of Mexico has a great deal at stake here. To consult with them after we have decided what to do about this enormously complicated matter is to invite misunderstanding and ill feeling.

- (4) Bi-lateral efforts should be made to promote economic development in Mexico.

Special emphasis should be placed on creating permanent jobs in those rural areas of Mexico which are the primary originating point of illegals. Ultimately, this is where the answer to the problem of the undocumented worker lies. As long as the push factors are operating, Mexican nationals will continue to leave their homes and go North.

- (5) A national intelligence estimate should be prepared to assess the impact of the new policies on Mexico.

The policy which the President announces will have a significant impact on the economy and therefore the politics of Mexico. The resulting return of jobless illegals to Mexico could increase unemployment by between 1-3 million. The loss of U.S. wage revenues, according to Dr. Wayne Cornelius of MIT, could reach 3 billion dollars. (The equivalent of Mexico's current balance of payments deficit.) These two factors could greatly increase political instability in Mexico. It would also make Mexico a much more attractive candidate for exploitation by unfriendly elements who are increasingly becoming aware of Mexico's strategic position as holder of the world's fourth or fifth largest proven oil reserves (50-75 billion barrels).

- (6) Consideration should be given to a visa program for temporary employment.

Dr. Wayne Cornelius' impressive and thorough 3 year study demonstrated that most workers from Mexico are here for an average of 4 months then return to Mexico where they remain for a while before once again entering the U.S. It is his belief that only about 15% of illegals remain in this country on a continuing basis. He proposes, therefore, a visa system of temporary employment. The work visa would be good for six months at which time the holder would be required to return to Mexico for at least six months. As long as the worker observed this requirement he/she would be able to reapply for another visa. Failure to comply would result in loss of this privilege. The great advantage of this approach is that it would for the first time put this country in a position to regulate the flow of these workers into the U.S. By "legalizing" these workers we would do a great deal to eliminate the multi million dollar smuggling trade as well as eliminate exploitation of vulnerable workers by unscrupulous employers.

- (7) The Fair Labor Standards laws should be strictly enforced.

This will help reduce the use of cheap (illegal) labor.

- (8) Any national system of new "counterfeit-proof" cards would be a debacle.

The expanded use of existing systems is much more desirable.

~~THE PRESIDENT HAS SEEN.~~

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

1977 APR 27 PM 7 10

April 27, 1977

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: Ray Marshall *Ray Marshall*
SUBJ: Report of Task Force on Undocumented Aliens

On behalf of the Secretary of State, the Attorney General, the Secretary of Health, Education and Welfare, and myself, I am herewith transmitting the report you requested on undocumented aliens. The comprehensive plan presented in the report attempts to address the legitimate concerns of the many groups who are interested in this subject. The members of the task force are prepared to meet with you to discuss these recommendations at your convenience.

Executive Summary

A Recommended Program Concerning the Problem of Undocumented Aliens for the President of the United States

The purpose of this paper is to outline for the President a comprehensive Federal program concerning illegal immigration. Undocumented aliens come to the United States mainly to seek employment and indications are that this flow has been increasing in recent years. The existence of undocumented aliens in the country both displaces domestic workers and creates an underclass of people living outside the legal system.

A complex problem such as this requires a comprehensive approach.

The recommendations of this paper fall into seven basic categories:

I. EMPLOYER SANCTIONS LEGISLATION

A. Focus on enforcement of existing Fair Labor Standards legislation in industries and occupations with a history and likelihood of employing undocumented aliens. Sixty new positions are recommended, at a cost of \$1.7 million:

B. Legislation making it unlawful to employ undocumented aliens.

1. Penalty: civil penalty of up to \$500 for each violation, to be administered by the magistrates courts; injunctive relief when appropriate for second or subsequent violations with available contempt sanctions.

2. As a defense, the employer would rely on prescribed existing identification as designated with regulations promulgated by the Attorney General.

3. The Secretary of Health, Education and Welfare should take steps to make the Social Security card a more reliable identifier of lawful status.

We estimate this program would require an additional 117 positions and would cost about \$2.4 million.

II. ENFORCEMENT

The recommendations on enforcement are a modified version of proposals made by the outgoing INS Commissioner. One element of the proposal would involve some innovative screening and investigative techniques at a cost of \$12.5 million. Additional resources would provide augmented personnel for denial of entry at ports, increased expenditures at southern ports of entry (much of this spending would be for hardware items, including a fully operational helicopter unit) and an anti-smuggling program. These items would require about 2,000 additional positions at a cost of \$92 million.

III. AMNESTY

The recommended amnesty program would allow the undocumented alien to apply for permanent resident status based upon three conditions:

(1) if the individual is either married to a U.S. citizen or is the parent or child of a U.S. citizen; (2) if the individual has none of the above relationships, but has been in the U.S. for five consecutive years immediately preceding the prescribed effective date and (3) if the individual qualifies under existing statutory conditions precluding the admission of certain aliens who have been convicted of crimes of moral turpitude.

The amnesty would apply to: (a) students -- other than government sponsored students living in this country who overstay their visas and who are not presently in a legal status; (b) refugees presently in the

U.S.; and (c) undocumented aliens married to qualified aliens.

IV. FOREIGN POLICY INITIATIVES

A. After the basic policy decisions concerning undocumented aliens are reached and before they are made public, the Department of State should begin consultations with Mexico and other nations most seriously affected by the program.

B. Greater weight in the assessment and approval of loan programs by international lending institutions in which the U.S. has significant voting strength should be given to the development of employment opportunities in the major source countries of undocumented aliens.

C. The Agency for International Development budget for FY 78 should be augmented to fund job-creation development projects in major out-migration countries.

D. A review of trade policies should be undertaken in order to determine the feasibility of increasing the access to U.S. product markets of labor intensive products from out-migration countries.

E. Priority should be given to the ongoing discussions with President Lopez Portillo of Mexico in order to develop cooperative approaches to the full range of U.S./Mexico issues, including undocumented aliens.

V. CERTIFICATION OF ALIEN WORKERS

The report recommends continuing the current policy of limiting the number of temporary worker certifications issued in order to protect the interests of American workers. It suggests that additional efforts be undertaken in the area of employment outreach and labor market rationalization as a means of responding to legitimate employer needs in this area.

VI. FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS HEAVILY
IMPACTED BY UNDOCUMENTED ALIENS

The report recommends acknowledging that State and local governments could suffer additional fiscal burdens because of the large population of undocumented aliens, particularly after amnesty is granted. The report suggests that the President should direct appropriate Cabinet officers and staff to examine what financial assistance could be provided without a special financial aid package.

VII. IMMIGRATION POLICY

The report recommends a thorough review of the country's immigration policy. It is suggested that the President support legislation introduced this week by Congressman Eilberg for the appointment of a Select Commission to undertake such a review.

TO THE CONGRESS OF THE UNITED STATES:

During my campaign I promised the American people that as President I would assure that their government is devoted exclusively to the public interest. I began fulfilling that promise by making information on my own financial interests publicly available. I have also required that all Presidential appointees disclose their business and financial interests, to remove any possibility of hidden conflicts of interest. In addition, I have obtained a commitment from these officials to adhere to tighter restrictions after leaving government, in order to curb the "revolving door" practice that has too often permitted former officials to exploit their government contacts for private gain.

To expand upon the actions I have taken so far, I will be submitting to Congress the Ethics in Government Act of 1977. This bill will establish far-reaching safeguards against conflicts of interest and abuse of the public trust by government officials. The bill incorporates the standards I have required of my own appointees, and extends their coverage to other high-ranking officials. It builds upon the Comptroller General's two-year investigation of conflict of interest enforcement in the Executive Branch. It also parallels the unprecedented efforts the Congress has made to strengthen ethical standards for its members.

In addition to strengthening conflict of interest controls through the Ethics in Government Act, I am today announcing support for legislation to authorize appointment of a temporary Special Prosecutor to handle cases of misconduct by high-ranking Executive Branch officials.

Both Houses have recently adopted new Codes of Conduct which are milestones in the history of government action to prevent actual or potential conflicts of interest. The leadership of both Houses have also pledged personal support for enactment of these new Codes into law. The Senate is currently considering S. 555, the Public Official Integrity Act of 1977,

and the House, in addition to creating a Select Committee on Ethics to enact its new Code into law, has also been working on legislation to establish government-wide ethical standards. I am confident that through our joint efforts, legislation prescribing government-wide standards of conduct will be considered and passed this year.

The Ethics in Government Act calls for a three-part program of financial disclosure, creation of a new Office of Ethics in the Civil Service Commission, and strengthened restrictions on post-employment activities of government officials.

First, the Ethics in Government Act would require policy-making officials, whether political appointees or top-level career civil servants, to disclose publicly their financial interests. Currently, policy-making employees must file statements of financial interest, but these statements are not available to the public. In addition to requiring public disclosure, the Act would require collection of more extensive information about employees' financial interests than the current Executive Order. Each official's report will include information on:

- income, whether earned or from investments;
- gifts, including travel, lodging, food and entertainment;
- assets, liabilities and financial transactions;
- positions held in business and professional organizations;
- agreements for future employment.

The vast majority of government officials, of course, have always followed strict ethical standards. I respect their efforts and integrity, and I have carefully considered the new obligations that this legislation will place on them. The provisions of the Act would strike a careful balance between the rights of these individuals to their privacy and the right

of the American people to know that their public officials are free from conflicts of interest.

Second, the Ethics in Government Act would strengthen existing restrictions on the revolving door between government and private industry. All too often officials have come into government for a short time and then left to accept a job in private industry, where one of their primary responsibilities is to handle contacts with the former employer.

To restrict this kind of arrangement I propose:

1. An extension of the current prohibition on appearances before an agency of former employment on matters that were under the official's responsibility:
 - by extending the period of the prohibition from one year to two; and
 - by including informal as well as formal contacts.
2. A new and broader ban on formal or informal contact on other matters with agencies of former employment, for a period of one year after the end of government service.

These rules also reflect a balance. They do not place unfair restrictions on the jobs former government officials may choose, but they will prevent the misuse of influence acquired through public service.

Third, this Act would establish a new Office of Government Ethics in the Civil Service Commission. Under the existing Executive Order, guidelines have often been unclear, and enforcement has been ineffective in some agencies. An effective oversight office is essential if strict ethical requirements are to be enforced throughout the government.

Because I believe these responsibilities are so important, I am asking that the Office be headed by a Director who is a Presidential appointee, confirmed by the Senate. I want to designate an individual who is clearly accountable to me, to the Chairman of the Civil Service Commission and to the Congress for the supervision of ethical standards in the Executive Branch. The Director and his new Office would:

- issue general guidelines to agencies on what constitutes a conflict of interest, and how those conflicts can be resolved;
- make recommendations to me on any changes needed in laws and regulations governing conflicts of interest;
- monitor compliance by agencies and individuals with established requirements; and
- increase understanding throughout the government and on the part of the American people of the ethical standards of conduct required of Executive Branch employees.

This new Office will ensure vigilant enforcement of the standards that are established to protect the honesty and integrity of our government.

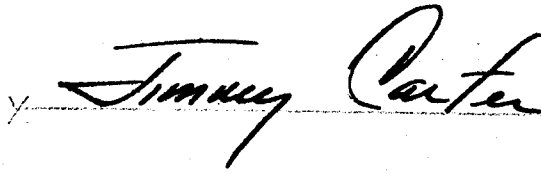
To complement the Ethics in Government Act, I am also announcing my support for legislation which would require appointment of a Special Prosecutor to investigate and prosecute alleged offenses by high government officials.

I am not submitting my own bill, for legislation has already been introduced in the Congress which, with relatively small revisions, will conform to my own principles for sound Special Prosecutor legislation. Under those principles the Special Prosecutor would be appointed by a specially empaneled court. He or she could be removed from office only upon a

finding of extraordinary impropriety or incapacity. The Special Prosecutor's jurisdiction would extend to alleged misconduct by the President, the Vice President, members of the Cabinet, and White House staff members.

This approach will eliminate all appearance of high-level interference in sensitive investigations and prosecutions. The American people must be assured that no one, regardless of position, is above the law.

I look forward to working with the Congress to enact both the Ethics in Government Act and Special Prosecutor legislation, so that we can help restore the faith of the American people in their government.

A handwritten signature in cursive script, reading "Jimmy Carter". The signature is written in dark ink and is positioned above a horizontal line.

THE WHITE HOUSE,

THE WHITE HOUSE
WASHINGTON

May 2, 1977

Bob Linder -

The attached Message to the Congress
on Ethics in Government is for
release to Hill tomorrow (Tuesday).
Stu Eizenstat and Jody Powell will
coordinate.

Rick Hutcheson

cc: Stu Eizenstat
Jody Powell
Frank Moore
Bob Lipshutz

5/2/77

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN.
April 30, 1977

MEMORANDUM FOR THE PRESIDENT

FROM:

Robert Lipshutz *RL (mc)*
Stu Eizenstat *Stu by DL*

SUBJECT:

Message to the Congress on
Ethics in Government

On April 25, 1977 you agreed with our recommendation that we introduce legislation on ethics in government and transmit to the Congress a message in support of such legislation. On April 26, 1977 you expressed support for legislation to authorize court appointment of a Special Prosecutor to handle cases against high officials.

Attached hereto for your review is the proposed message to Congress on ethics in government. The message supports legislation we will introduce and which requires financial disclosure by executive department employees, strengthens prohibitions on post government employment and establishes an ethics division within the Civil Service Commission. The message also endorses Special Prosecutor legislation in accord with your specifications.